

THE USE OF INCOME AS A MEASURE OF  
SCHOOL DISTRICT FISCAL CAPACITY:  
A LEGAL INTERPRETATION

BY

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The problem active in this study was the use of income as a measure of fiscal capacity of local school districts. More specifically, the research concerned the legal ramifications of incorporating such a measure into a public school finance system. The research included a review of the principles of taxation and legal precedents concerning uniformity and equality of taxation, a discussion of the quantitative evaluation of the use of income as a measure of fiscal capacity, and an analysis of the legal precedents that could influence the future use of an income measure in a public school finance system.

The use of an income measure has been viewed by some authorities as a positive step towards taxpayer equity due to its close relation to the ability-to-pay principle of taxation and the progressive effect it has on the taxpayers. However, other authors have criticized the use of the measure on the basis that most school districts do not have

the authority to tax income. Consequently, the use of theoretical taxpaying ability in the form of average district income would cause the violation of the taxation principle of individual horizontal equity.

In analyzing these criticisms of the income measure, the study surveys the judicial posture toward equality and uniformity of taxation. After reviewing the adjudication, it is a conclusion that the courts have been quite lenient in their interpretation of uniformity of equality principles of taxation and the probability of the income measure being declared illegal is low.

Many of the results from the quantitative evaluation of income and property valuation as measures of fiscal capacity indicate the absence of a relationship between the two measures. Also, computer simulations of tax structures that include an income plus property measure indicate that taxpayer equity would be improved by the use of an income measure of fiscal capacity. However, some researchers have argued that only measures of fiscal capacity that are accessible to the school districts should be used in school tax structures. The use of theoretical taxpaying ability would cause greater individual horizontal equities than exist in the present finance systems.

The final chapter contains a review of the legal precedents concerning delegation of taxing authority and the laws and court decisions surrounding the authority to levy income and property taxes. From the analyses, it would appear that the state has the power to delegate

taxing authority to local school districts which would allow local access to tax income. The problems seem to arise in states that prohibit a state income tax or a graduated income tax. The possibility of utilizing an income plus property measure of fiscal capacity in these states would probably be limited.

Just as the laws concerning taxation differ among the states, the legal precedents will also differ dependent upon the laws. There is no pervasive rule that will determine the legality of a tax system that includes an income factor. The major determinant will come from the precedents that come from the legal challenges that will occur in the states, and these precedents will influence the design and implementation of the tax structure within each state.

## CHAPTER I

### INTRODUCTION

The definition and measurement of local fiscal capacity has been a chronic problem in the area of public school finance. In practically every state there are variations among the local districts, in their ability to support schools, that are greater than those among the states.<sup>1</sup> Since the early part of the twentieth century, researchers have documented the existence of wide variations among local school districts in fiscal capacity to support public education.<sup>2</sup>

Since the foundation program approach was introduced in the 1920s, most states have adopted varied public school finance systems that were designed to provide varying degrees of fiscal equalization among school districts. Under the fiscal equalization concept, state dollars are apportioned among school districts in relation to

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<sup>1</sup>Roe L. Johns and Edgar L. Morphet, The Economics and Financing of Education--A Systems Approach, 3rd ed. (Englewood Cliffs, N. J.: Prentice-Hall, 1975), p. 193.

<sup>2</sup>See George D. Strayer and Robert M. Haig, The Financing of Education in the State of New York (New York: Macmillan Co., 1923); Paul R. Mort, State Support for Public School (New York: Teachers' College, Columbia University, 1926); Harlan Updegraff, Rural School Survey of New York State: Financial Support (Ithaca, N. Y.: Author, 1922).



educational need and in reverse relation to local fiscal capacity. The basic rationale underlying the fiscal equalization approach, whether implemented through a foundation program, power equalizing formula, or other method, is that the state is responsible for facilitating the attainment of school finance equity for public school pupils and taxpayers through a system of shared state and local financing.

One method to increase school finance equity which has been adopted by several states is the use of income as an economic indicator for local school district fiscal capacity.<sup>1</sup> Accompanying the adoption of this measure of fiscal capacity were suggestions that the fiscal capacity measure unfairly shifted the tax burden.<sup>2</sup> There were also claims that income as a measure of fiscal capacity for local school districts was not a realistic measure since local school districts do not have the power to tax the income that was being measured.<sup>3</sup>

#### Purpose of the Study

The purpose of the study is to analyze judicial precedents concerning the use of income as a measure of local fiscal capacity and determine its constitutionality

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<sup>1</sup>Governor's Commission on Public School Finance, Access to Equal Educational Opportunity in North Carolina (Raleigh, N. C.: Governor's Commission on Public School Finance, 1979).

<sup>2</sup>Lawrence L. Brown et al., "School Finance Reform in the Seventies," Journal of Education Finance 4 (Fall 1978): 195-212.

<sup>3</sup>Johns and Morphet, The Economics and Financing of Education, p. 147.

under various provisions of state constitutions. More specifically, the research will seek to ascertain whether there are legal provisions which prohibit the use of a measure of taxpaying ability, property plus income, which is not statutorily accessible to local school districts.

### Procedures

An historical-legal approach and reasoning by analogy<sup>1</sup> will serve as a basis for investigating the status of income as a measure of local school district wealth. The resource materials that will be utilized to identify primary sources within the National Reporter System will include the legal and card catalog, legal periodicals found in the Index to Legal Periodicals and Education Index, the American Digest System, Sheppard's Citations, American Law Reports, American Jurisprudence, Corpus Juris Secundum, Descriptive Word Index, and Westlaw computer searches.

In the initial phase of the research, court cases will be identified through the use of secondary sources and by reference to citations found in reported decisions from 1788 through 1980. Selected cases from states in which judicial precedents have been set concerning the use of income as a measure of fiscal capacity for local school districts will be analyzed. The research will be conducted by utilizing the resources of the University of Florida Law

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<sup>1</sup>Edward H. Levi, An Introduction to Legal Reasoning (Chicago: University of Chicago Press, 1949).

Library, and supplemented where necessary by information obtained by letter and telephone conversations.

From this compilation of judicial precedents, important legal opinion will be identified and examined. Based on the results of the examination the legal consequences of adopting income as a measure of local school district wealth will be assessed.

### Delimitations

The study will be delimited to the identification and analysis of published state and federal appellate court decisions which refer to the use of income as a measure of fiscal capacity for local school districts. The study will be further delimited to the legal opinions concerning this measure of fiscal capacity.

The study will be further delimited to the examination of income as a measure of fiscal capacity for local school districts. The researcher will not examine other proposed fiscal capacity measures such as wealth, consumption, or property. Implications will be confined to judicial precedent concerning income as a measure of local fiscal capacity.

### Justification

The definition and measurement of local fiscal capacity is a critical factor in determining the distribution of state revenue among school districts in states using a fiscal equalization approach to public school

finance. Property valuation per pupil has long been the standard measure of local fiscal capacity employed in state school equalization programs. However, the use of this measure has received much criticism in the school finance literature, and the courts.<sup>1</sup>

In 1971, the California Supreme Court held that the California state school finance system "invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors."<sup>2</sup> As a result of this decision, fifty-two actions were filed in thirty-one states challenging the equity of the school finance systems and authorities were faced with the task of revising these systems.

One idea that gained popularity was the incorporation of an income factor into the local fiscal capacity measure. Between 1973 and 1980 the States of Connecticut, Missouri, Pennsylvania, Virginia, and Kansas enacted school finance legislation incorporating income and/or retail sales as adjustments to the traditional property measure of local fiscal capacity.

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<sup>1</sup>See Charles S. Benson, Final Report to the Senate Select Committee on School District Finance, Vol. I (Sacramento, Cal.: California Senate, 1972); G. Allen Hickrod and Ben C. Hubbard, "The Concept of Fiscal Effort in the Illinois General Purpose Grant-In-Aid: Some Legal and Measurement Problems," Journal of Education Finance 3 (Winter 1978): 272-78; Allan Odden, "Alternative Measures of School District Wealth," Journal of Education Finance 2 (Fall 1977): 356-479; Serrano v. Priest, 487 P.2d 1241 (1971); Serrano v. Priest, 557 P.2d 929 (1976); Robinson v. Cahill, 62 N.J. 473, 303 A. 2d 273 (1973).

<sup>2</sup>Serrano v. Priest, 487 P.2d 1244 (1971).

In 1977, Governor Hunt of North Carolina authorized a Governor's Commission to study the financial system of public schools and make recommendations for its improvement. According to the Commission a plan was to be devised and implemented for financing public education which would satisfy the requirement for equal education opportunity and improve the fiscal neutrality by which financial resources were allocated to school districts.<sup>1</sup>

In order to achieve the goal, the accurate measurement of local fiscal capacity became very important. Therefore, one of the problems of the study was to analyze the relationships between alternative local fiscal capacity measures and selected school equity standards. More specifically, the commission had to identify alternative local fiscal capacity concepts, school finance equity standards, fiscal capacity measurement approaches, and school finance equity evaluation procedures and then analyze the relationships between local fiscal capacity measures and selected school finance equity standards.

One alternative was the wealth index<sup>2</sup> which combined county contributions to the state general fund per pupil and adjusted property valuation per pupil. This index represents a compromise position between the economic indicator approach and the tax base approach in that the

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<sup>1</sup>Governor's Commission on Public School Finance, Access to Equal Educational Opportunity in North Carolina.

<sup>2</sup>Ibid., p. 62.

property and sales tax are accessible to county governments, while the remaining elements of the general fund contribution do not represent sources of revenue available at the county level.

The combination of property and taxable retail sales was examined as another alternative for measuring local fiscal capacity.<sup>1</sup> This alternative maintained the principle of using only those tax bases which are accessible at the local level. A taxable retail sales per pupil index was computed and combined with the adjusted property valuation for the index.

Lastly, property valuation, taxable retail sales, and county contribution to state general fund per average daily membership (ADM) were combined to form a measure of local fiscal capacity. This index is based on the assumption that the fiscal capacity of counties to support public education is the function of both the tax bases accessible to counties and the economic ability of taxpayers to pay for education. The combination wealth index was computed by multiplying the property plus sales index by an adjusted general fund index. The property plus sales indices were adjusted upward or downward in accordance with the state general fund contribution per ADM.

The impact of the alternative local fiscal capacity measures was analyzed through the use of an illustrative

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<sup>1</sup>Governor's Commission on Public School Finance, Access to Equal Educational Opportunity in North Carolina, p. 67.



equalization model. The model was employed as a vehicle for comparing the effects of the alternative measures of local fiscal capacity. Table 1 shows the results of research in the form of the local tax rates necessary in each county to generate the county's required share of the \$129,831,936.

The property wealth index defines local fiscal capacity in terms of adjusted county property valuation. Since property is a tax base which is available to the counties, the local contribution could be raised through a uniform 20-cent property tax levy in each county. Taxpayers in each county would pay the same property tax rate to obtain the same guaranteed revenue. Similarly, the counties have access to both property and sales taxes; therefore the required local effort could be raised by the property plus sales index through a uniform 15.22-cent property tax levy plus 19 percent of the 1-cent local sales tax. Again, the taxpayers in each county would pay the same tax rate to obtain the same guaranteed revenue per ADM.

However, the situation would be different if general fund plus property were used as the wealth measure. Each county's required share of the \$129,831,936 local levy would be determined based on the proportion of total contribution to the state general fund plus property within each county. Since the counties do not have access to a tax base which is closely related to this wealth measure, the property tax rates in each county would vary

TABLE 1

## TAX RATE EQUIVALENTS OF LOCAL EFFORT REQUIREMENTS\*\*a

District	Property Index (Property Tax Rate)	General Fund Plus Property Index (Property Tax Rate)	Property Plus Sales Index (Prop. Tax Rate)	Sales Tax Ratio	Combination Index (Property Tax Rate)
Dare	\$0.2000	\$0.1093	\$0.1552	.0019	2.153
Brunswick	0.2000	0.0663	0.1552	.0019	1.395
Forsyth	0.2000	0.2250	0.1552	.0019	2.542
Rowan	0.2000	0.1927	0.1552	.0019	1.934
Buncomba	0.2000	0.2200	0.1552	.0019	2.174
Transylvania	0.2000	0.1536	0.1552	.0019	1.622
Iredell	0.2000	0.1838	0.1552	.0019	1.816
Beaufort	0.2000	0.2030	0.1552	.0019	1.896
Wilson	0.2000	0.2272	0.1552	.0019	2.050
Surry	0.2000	0.1973	0.1552	.0019	1.822
Alamance	0.2000	0.2462	0.1552	.0019	2.063
Jones	0.2000	0.1291	0.1552	.0019	1.267
Randolph	0.2000	0.2057	0.1552	.0019	1.655
Craven	0.2000	0.2444	0.1552	.0019	1.928
Halifax	0.2000	0.2217	0.1552	.0019	1.777
Polk	0.2000	0.3415	0.1552	.0019	2.084
Caswell	0.2000	0.1373	0.1552	.0019	1.163
Johnston	0.2000	0.2754	0.1552	.0019	1.783
Alexander	0.2000	0.2404	0.1552	.0019	1.543
Robeson	0.2000	0.2493	0.1552	.0019	1.578

\*Required local effort in relation to specified tax bases.

<sup>a</sup> Governor's Commission on Public School Finance, Access to Equal Educational Opportunity in North Carolina, p. 86.



depending on the rates of general fund plus property wealth to property wealth alone. As shown in Table 1, a uniform guarantee would be achieved only through unequal property tax burdens among counties.

As a result of the research, the Commission recommended the adoption of the property plus sales index adjusted by general fund wealth stating that "it provides for the broadest measure of the economic resources available in each county."<sup>1</sup> However, the use of this tax structure would entail the levy of a variable rate tax on the school districts.

The use of the variable rate tax was criticized by Melcher in his research concerning fiscal capacity measures for North Carolina.<sup>2</sup> He concluded that the variable rate tax which was partially based on contributions to the general fund would violate the horizontal and vertical equity standards of taxation due to the limited access by school districts. Melcher developed fiscal capacity measures that were based on tax base accessibility as well as economic measures. According to Melcher, these fiscal capacity measures should provide a much greater degree of horizontal and vertical equity due to the increased access to the measures of fiscal capacity.

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<sup>1</sup>Governor's Commission on Public School Finance, Access to Equal Educational Opportunity in North Carolina, p. 86.

<sup>2</sup>Thomas R. Melcher, "The Relationship Between Local Fiscal Capacity Measures and Selected School Finance Equity Standards" (Ph.D. dissertation, University of Florida, 1978), pp. 82-85.

The use of a variable rate tax emphasizes the problem dealt with in this work. As is evident in Table 1, the wealthier school districts would have a higher tax rate than the poorer school districts. The difference in tax rates might be viewed by the courts as violating equality and uniformity laws of taxation since a state system of public education should be taxed at an equal and uniform rate across that state rather than variable rates levied on different sections of the state. Therefore, the possibility of utilizing such a tax structure would probably meet with some litigation concerning its effect on uniformity and equality of taxation.

Another example of the effect of using an income measure to determine the fiscal capacity of school districts can be seen in Alexander's research concerning the wealth tax as an alternative form of taxation. As a portion of the research, Alexander<sup>1</sup> examined the fiscal capacity of selected Florida school districts as determined by real property, income, and total wealth which included the net value of a corporation's and/or individual's assets. From an examination of Table 2 it is evident that the variable used to determine the fiscal capacity of school districts can have a significant effect on the outcome of the measure.

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<sup>1</sup>Kern Alexander, "The Wealth Tax as an Alternative Revenue Source for Public Schools," Journal of Education Finance 2 (Spring 1977): 451-80.

TABLE 2

NONEXEMPT REAL PROPERTY AND TOTAL WEALTH COMPARED AS  
PERCENT OF STATE TOTAL FOR SMALL AND LARGE  
SCHOOL DISTRICTS, 1974-75<sup>a</sup>

	Percent of State Nonexempt Real Property	Percent of State Total Wealth Plus Pers. Income	Percent of State Total Wealth w/o Income
<u>Smallest School Districts</u>			
Union	.028	.031	.026
Gilchrist	.059	.040	.040
Glades	.123	.075	.082
Liberty	.032	.025	.024
Lafayette	.041	.028	.028
<u>Largest School Districts</u>			
Dade	20.323	19.737	19.602
Broward	13.425	11.292	11.115
Hillsborough	4.249	5.750	5.575
Duval	4.798	6.632	6.583
Orange	5.673	4.348	4.109

<sup>a</sup>Alexander, "The Wealth Tax as an Alternative Revenue Source for Public Schools," p. 474.

Table 2 shows that among the largest school districts, property value tends to overstate the relative fiscal capacity of Dade, Broward, and Orange and understate Hillsborough and Duval. Among the small school districts in the state, Union's capacity is slightly underestimated by real property valuation, while Gilchrist, Glades, Liberty, and Lafayette are less able than real property valuation indicates.

Personal income as a predictor of fiscal capacity seems to relate much more consistently with the estimates derived from total wealth. Gilchrist and Lafayette are identical, Broward and Liberty are very similar, and the other districts show much less variability than the estimates derived from property valuation. From this observation it would seem that implications for an income measure are rather obvious. Taxpayer equity would be increased, because the required local effort burden would be distributed throughout the state more nearly according to actual fiscal ability to pay.

This tax structure is not without problems, one being that most local school districts do not have the authority to tax the income that is being utilized as a measure of fiscal capacity. Local school districts have traditionally had the authority to tax property, but have not been able to tax income. This poses the problem of using a measure of fiscal capacity which cannot be taxed at the local level.

In many instances, the inclusion of a wealth or ability-to-pay measure is warranted to provide a more accurate fiscal assessment of school districts. As this type of measure becomes more popular, the need for a legal evaluation of such a tax system becomes important. Therefore, the goal of the study is to synthesize the judicial precedents and literature, and develop some recommendations concerning the future litigation dealing with constitutionality of income as a fiscal capacity measure for local school districts.

#### Definition of Terms

Case law. "The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidence or formed by the adjudged cases. . . ." <sup>1</sup>

Constitutional law. "That branch of the public law of a state which . . . prescribes generally the plan and method according to which public affairs of the state are to be administered." <sup>2</sup>

Economic indicator approach. A method for measuring the relative level of economic resources available to governmental jurisdiction for the support of public services based on identification of factors such as income, consumption, and wealth. <sup>3</sup>

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<sup>1</sup>Harold C. Black, Black's Law Dictionary, 4th ed. (St. Paul, Minn.: West Publishing Co., 1968), p. 170.

<sup>2</sup>Ibid., p. 385.

<sup>3</sup>Odden, "Alternative Measures," pp. 356-57.

Income. "The amount of an individual's consumption outlays plus the increase (or minus the decrease) in his net worth during a particular time period."<sup>1</sup>

Precedent. "An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterwards arising on a similar question of law."<sup>2</sup>

### Organization of the Research Report

The research is reported in five chapters. Chapter I contains the statement of the problem and the justification. A review of the state of the art of uniformity and equality of taxation appears in Chapter II. Chapter III presents a quantitative analysis of property and income measures. The legal precedents that could influence future litigation concerning the use of income as a measure of fiscal capacity are discussed in Chapter IV. A summary and conclusions drawn from the research comprise Chapter V.

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<sup>1</sup>Joseph A. Peckman and Benjamin A. Okner, Who Bears the Tax Burden (Washington, D.C.: The Brookings Institute, 1974), p. 11.

<sup>2</sup>Black, Black's Law Dictionary, supra note 12, p. 340.



## CHAPTER II

### THE STATE OF THE ART OF UNIFORMITY AND EQUALITY OF TAXATION

#### Introduction

The task of devising methods to uniformly tax local school districts for the support of education has historically been an unending one. Updegraff, Strayer and Haig, and Mort<sup>1</sup> recognized the inequities in school finance methods based largely on unevenly distributed local resources and cited the responsibility of the states for ensuring equality of educational opportunity and taxpayer equity. They recommended that state school finance programs based on the concept of fiscal equalization be developed and implemented.

Since the foundation program approach was introduced in the 1920s, most states have adopted varied public school finance systems that were designed to provide varying degrees of uniform taxation among states. The basic rationale underlying the fiscal equalization approach is that the state is responsible for facilitating the attainment

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<sup>1</sup>See Updegraff, Rural School Survey of New York State; Strayer and Haig, The Financing of Education; Mort, State Support for the Public Schools.

of equity for public school pupils and taxpayers through a system of shared state and local financing.

The development of alternative concepts of taxpayer equity has been influenced greatly by the older, more far-reaching issue of taxpayer equity in public finance. The struggle to develop a taxation system that attains equal treatment of equals has its origins in the Middle Ages. Although there has been nearly universal acceptance of the principle that the costs of governmental activities should be fairly distributed among the public, consensus does not exist concerning the definition and measurement of taxpayer equity. The concept of equity is a dynamic one, which varies among individuals and societies within a given period and over time. Equitable treatment in taxation and what constitutes it is not a matter of theory but of personal philosophy.<sup>1</sup> In education, as in many other areas of public concern, it has been recognized that there are numerous groups for whom equity is an objective: students, taxpayers, teachers, etc. So, the concept of simple equalization has been expanded to cover a broader clientele.<sup>2</sup>

Chapter II contains a review of principles of taxation and methods of education financing in relation to

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<sup>1</sup>John Due, "Alternative State and Local Tax Sources for Education," in Educational Need in the Public Economy, eds. Kern Alexander and K. Forbis Jordan (Gainesville, Fla.: University Presses of Florida, 1976), p. 258; O. Eckstein, Public Finance, 2nd ed. (Englewood Cliffs, N. J.: Prentice-Hall, 1967), p. 59.

<sup>2</sup>B. P. Herber, Modern Public School Finance: The Study of Public Sector Economics (Homewood, Ill.: Irwin, 1971), p. 117.



property and income taxation and their effect on taxpayer equity. Also included in the chapter is a discussion of the legal precedent concerning uniformity and equality of taxation in relation to income and property taxation.

### Principles of Taxation

#### Benefit and Ability- To-Pay Principles

Inasmuch as taxpayer equity is one of the goals of school finance systems, it becomes important to examine certain principles of taxation in relation to taxpayer equity. Therefore, this section contains a discussion of the principles and their relation to the use of income as a measure of fiscal capacity in a school finance system. It will serve as a theoretical basis for later discussions concerning the implementation of such a system.

Two general philosophies of taxpayer equity have received wide acceptance in the development of modern western civilization. The benefit principle, deriving from the contract theory of the state, called for the distribution of tax burdens among individuals in accordance with the benefits received from public services. The ability-to-pay principle, dating back to the sixteenth century, calls for the distribution of tax burdens according to individual ability-to-pay, regardless of the benefits received from governmental activities.<sup>1</sup>

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<sup>1</sup>R. A. Musgrave and P. B. Musgrave, Public Finance in Theory and Practice, 2nd ed. (New York: McGraw-Hill, 1976), p. 211.

Both the benefit and ability-to-pay principles are included in Adam Smith's first canon of taxation:

The subject of every state ought to contribute towards the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenues which they respectively enjoy under the protection of the state. . . . In the observation or neglect of this maxim consists what is called the equality or inequality of taxation.<sup>1</sup>

J. S. Mill described the ability-to-pay principle as follows: "The subjects of every state ought to contribute to the support of governments, as nearly as possible in proportion to their respective abilities."<sup>2</sup>

The ability-to-pay principle has served as the basis for the tax structure that includes an income factor as a measure of fiscal capacity. The philosophy being that each school district should be taxed in accordance with its fiscal ability to support the schools within its bounds. The optimum result being to improve the equality of the tax system and provide a more accurate assessment of fiscal ability.

There are concerns as to the legality of measuring ability-to-pay as average school district income rather than individual income. Since the tax rate would be levied across a district, the measure of income would not be by individual but an average of the district. Consequently, the residents of the district whose incomes fall below the

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<sup>1</sup>Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations (New York: Random House, 1937), p. 7.

<sup>2</sup>John S. Mill, Principles of Political Economy (New York: Appleton, 1893), p. 394.

average would bear a greater tax burden in accordance with their individual ability-to-pay than those residents that have incomes above the district average. The tax structure would inherently cause a certain degree of inequality in taxing the residents due to the method of measurement used to determine income.

Another concern stems from the fact that local school districts have not, in most cases, had the authority to tax income, which causes problems with using a measure of fiscal ability that is not accessible to local school districts. Since property can be taxed by school districts, there have been arguments in favor of retaining property valuation as the only measure of fiscal ability and prohibiting the use of a measure of fiscal ability, income, that can be taxed only by the state. A more detailed discussion of this problem appears in the latter portion of Chapter II.

#### Horizontal and Vertical Equity

Benson, Buchanon, and Herber<sup>1</sup> are three authors who have reviewed the interrelationships between the benefit and ability-to-pay principles and the concepts of horizontal and vertical equity. The horizontal equity standard provides that equals should be treated as equals. For example, two individuals with the same amount of taxable

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<sup>1</sup>Charles S. Benson, The Economics of Public Education, 3rd ed. (Boston: Houghton Mifflin, 1978); James M. Buchanon, The Public Finances, 3rd ed. (Homewood, Ill.: Irwin, 1970); Herber, Modern Public School Finance.

income should pay the same amount of income tax. According to Garms, Guthrie, and Pierce "this is a relatively simple criterion which is easy to judge, and most taxes are relatively equitable based on this criterion."<sup>1</sup> The standard of vertical equity suggests that unequals should be treated unequally. One criterion for vertical equity is that persons should pay taxes in proportion to the benefit received, or in proportion to their contribution to the cost of whatever is supported by the tax. For example, those who use electricity generated by a municipal power company pay taxes for its support in the form of a charge for electricity used. Garms, Guthrie, and Pierce described this type of tax as "seeming so eminently reasonable that there is a temptation to endorse this as a basis for all taxation, but it is often difficult to assess either the benefits received or contributions to cost."<sup>2</sup>

Application of horizontal and vertical equity standards to the ability-to-pay principle infers that persons in the same economic position should bear equal tax burdens, whereas wealthy individuals should bear a greater burden than poor individuals. Income, consumption, and wealth are some of the indicators which have been employed in the measurement of the economic positions of individuals. Personal

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<sup>1</sup>Walter I. Garms, James W. Guthrie, and Laurence A. Pierce, School Finance: The Economics and Politics of Public Education (Englewood Cliffs, N. J.: Prentice-Hall, 1978), p. 290.

<sup>2</sup>Ibid.

income has become one of the most frequently used measures in the United States. The ability-to-pay principle is applicable to a wider variety of governmental services than the benefit principle. It is generally viewed as the most widely accepted principle of taxation in the United States.<sup>1</sup>

In 1976, Due summarized the major criteria of taxpayer equity which have gained general recognition in contemporary American society:

Usually equity is considered to require: (1) equal treatment of equals--persons regarded as being in the same circumstances should be taxed the same amount; (2) distribution of tax burden on the basis of ability-to-pay as measured by income, wealth, consumption or other criteria; (3) exclusion from tax of persons in the lowest income groups on the grounds that they have no tax-paying capacity; (4) a progressive overall distribution of tax relative to income on the basis that tax capacity rises more rapidly than income.<sup>2</sup>

In the context of these criteria, an alternative tax structure that includes an income measure would seem to be appropriate. The tax structure is based on the horizontal equity principle and utilizes income as a measure of ability-to-pay. The tax system is also designed to be levied at a progressive rate based on the average income of the school districts.

Even though the alternative tax structure meets the criteria set forth in this section, there are some problems

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<sup>1</sup>Charles S. Benson, The Economics of Public Education, 2nd ed. (Boston: Houghton Mifflin, 1968), p. 272; Johns and Morphet, The Economics and Financing of Education, p. 155.

<sup>2</sup>Due, "Alternative State and Local Tax Sources for Education," p. 258.

with the method used to measure income. As discussed previously, average income is used as the measure of a school district's fiscal capacity. Due to the use of this measure, the possibility exists that the tax system may be viewed as violative of individual rights of equality of taxation since the tax system would be based on horizontal equity for districts but would fail to provide equity for individual taxpayers.

#### Effect of a Tax

Another important concept of taxation concerns the effect of a tax. Is it progressive, proportional, or regressive in its effect? A tax is considered progressive when the tax rate increases as the income or property base increases. In contrast, a tax is considered regressive when tax rate decreases as the base increases. And, a proportional tax is defined as such when the tax remains constant whether the base increases or decreases.

Graduated income taxes are progressive in effect and are closely related to the ability-to-pay principle. Also, according to Johns and Morphet,<sup>1</sup> income taxes probably have more relationship to benefits received and costs incurred than do most other taxes. The federal personal income tax is considered, by Johns and Morphet,<sup>2</sup> to be an excellent example of a progressive tax. The graduated tax

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<sup>1</sup>Johns and Morphet, The Economics and Financing of Education, p. 159.

<sup>2</sup>Ibid.



rate is based on the amount of persons' income and their ability to pay. As the amount of income increases so does the tax rate.

Johns and Morphet have stated that "there is probably no tax levied in the United States that is technically a regressive tax."<sup>1</sup> However, there have been some claims that the property tax is a regressive tax. A person may live in a \$30,000 house, have an income of \$15,000, and pay \$1,500 in property taxes. In comparison, another person could live in the same community, own a house of the same value, and pay the same taxes, but earn \$25,000 a year. In this situation the former example would constitute 10 percent of the total income and the latter would claim 6 percent of the yearly income. Therefore, the property tax would be regressive in the final effect even though the rates are initially the same for both people. Most taxes behave in this manner except for income taxes. Income taxes are considered progressive to varying degrees depending on the rate of graduation.

From this discussion, the inclusion of an income factor in a public school tax structure would seem warranted due to progressive nature of the tax. However, with the use of an average income measure rather than individual income, the progressivity of the income tax would be effected to varying degrees dependent upon the number of

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<sup>1</sup>Johns and Morphet, The Economics and Financing of Education.

wealthy and poor people residing in a school district, although, in considering the state as a whole, the progressivity of the income tax would probably cause an improvement in the equality of taxation in comparison to the present systems which are based solely on property valuation.

### Construction of an Equitable Tax System

Following the discussion of the principles of taxation, it is appropriate to attempt to devise a tax system based on the principles. However, when faced with this task, the realities of implementing such a system must also be considered. The following section contains a discussion concerning the construction and implementation of an equitable tax system that adheres to the principles of taxation and fits into the existing tax structure.

When the fairness of a tax is considered, income taxes are progressive both in rate structure and ultimate effect. Therefore, if a tax structure were to be just, it would have to consist almost entirely of income taxes. This type of structure has historically not been feasible due to the structure of federal, state, and local government. Under a unitary form of government, local fiscal capacity would be inconsequential in the analyses of standards of tax burdens. Buchanan observed that "the most serious problems of intergovernmental coordination arise because the separate subordinate units of government differ



substantially in fiscal capacity."<sup>1</sup> Therefore, in order to evaluate the justice and equity of taxes, it is necessary to evaluate the tax structure as a whole, including all levels of government. The federal government has traditionally collected a significant portion of its tax revenues from graduated income taxes, and the state and local governments have been able to levy some taxes that are less progressive in effect without destroying the overall equity of the total taxing system. Local governments have historically used property taxes as their means of collecting revenue. And, as discussed previously, the property tax is considered to be proportional or possibly regressive in its effect. However, it would be impossible for all levels of government to utilize an income tax as their primary source of revenue. Due to its equitable effect, some form of an income tax or measure could be incorporated into each level of government's taxation system without relying totally on income taxes as the primary source of income.

Local governments have relied almost completely on property taxes as their major source of income. Property taxes usually produce a substantial amount of revenue, but are rigid due to constitutional and statutory restrictions, are expensive to administer, and are relatively inconvenient to pay. In comparison, income taxes yield large sums of money which fluctuate with the economy, are nonrigid due

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<sup>1</sup>Buchanon, The Public Finances, p. 431.

to the lack of constitutional restrictions on rates, economical to administer, and convenient to pay. With these positive attributes, the inclusion of an income tax into a local government's taxation system seems warranted. However, until quite recently, most school finance systems have been based on property valuation and have ignored the use of an income factor. Therefore, in the following discussion of alternative school finance systems, property valuation is the assumed base for each one which dictates that the systems will be at best proportional and at worst regressive due to the nature of the property tax.

### School Finance Systems

The United States Constitution does not delegate responsibility for education to the federal government; the Tenth Amendment reserves to the states or the people all rights not specifically delegated to the federal government. Therefore the states have the responsibility for educating its citizens, with many of the daily operations assigned to the local school districts.<sup>1</sup>

With the state and local governments assuming financial and political responsibility for education, methods by which education was funded have proliferated. Not until the twentieth century was the concept of equalization

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<sup>1</sup>The interrelated responsibilities between the federal, state, and local governments are fully explicated in Kern Alexander, Ray Corns, and Walter McCann, Public School Law (St. Paul, Minn.: West Publishing Co., 1980).

introduced as a fundamental consideration when securing funds for a statewide education system. The standard of fiscal equity for taxpayers most frequently mentioned in the school finance literature since the early 1900s is that equal local tax burdens among school districts in relation to ability-to-pay should result in equal resource levels per educational need unit irrespective of variations in local fiscal capacity. This standard could be viewed as a combined application of the ability-to-pay and benefit principles to public school finance systems including state and local revenue sources.

Cubberley recognized the need to "equalize the advantages to all as nearly as can be done with the resources at hand."<sup>1</sup> He observed that widely varying local tax rates would be required to approach the goal of equality of educational opportunity among districts within states in the absence of state aid to education. He suggested that state school finance programs be developed to provide greater equality of local tax burdens as well as equality of educational opportunity. He also recommended that states "place a premium on those local efforts which will enable communities to rise above the legal minimum as far as possible. . . ."<sup>2</sup> This idea has become known as reward for effort.

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<sup>1</sup>Ellwood P. Cubberley, School Funds and Their Apportionment (New York: Teachers College, Columbia University, 1905), p. 17.

<sup>2</sup>Ibid.

Updegraff<sup>1</sup> realized that unlimited reward for effort would quickly result in extreme disequalization of educational opportunity among the school districts in a state. Therefore, he suggested that the states should provide all school districts with a guaranteed revenue per unit of educational need for any given level of local tax effort equal to that produced in the district of average wealth.

Strayer and Haig<sup>2</sup> developed the foundation program method of state school finance based on the premise that a uniform level of local tax effort should provide a prescribed minimum level of educational services in each school district within the state. Ideally this minimum would be determined by the revenue available to the richest district in the state. All other districts would levy the same tax rate as the richest district but they would raise less money. To the extent their revenue fell short of that available in the richest district the difference would be provided by the state.

Paul Mort clarified and elaborated on their ideas and added the concept of weighting. He stated:

Some communities offer more years of schooling or a more costly type of education than is common. If it can be established that unusual conditions require any

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<sup>1</sup>Updegraff, Rural School Survey of New York State, pp. 54-60.

<sup>2</sup>Strayer and Haig, The Financing of Education, pp. 174-76.

such additional offerings, they may be recognized as part of the educational program.<sup>1</sup>

Originally, Mort used weightings to correct for differences in school size and in density of population among school districts. In more recent times the concept has been extended to specific program areas such as vocational, exceptional, and compensatory education.

As an example of weighting, Johns and Alexander<sup>2</sup> developed a scale for weighting the pupils per ADM based on the assumption that educational programs designed to meet the many different needs of pupils vary widely in per pupil cost. The authors pointed out that senior high schools cost more per pupil than elementary schools and that exceptional education programs, vocational programs, and programs for compensatory education all cost more per pupil than regular programs.

The method utilized by Johns and Alexander was to base the weighting of pupils on variations from the per pupil cost of regular pupils enrolled in elementary schools. From this basic weighting, the cost of educating other groups of students was computed. If it was found that the cost of educating exceptional pupils was approximately twice the pupil-teacher ratio due to the fact that the per

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<sup>1</sup>Paul R. Mort, The Measurement of Educational Need (New York: Teachers College, Columbia University, 1925), pp. 6-7.

<sup>2</sup>Roe L. Johns and Kern Alexander, Alternative Programs for Financing Education, Vol. 5 (Gainesville, Fla.: National Education Finance Project, 1971).

pupil-teacher ratio is only one-half of the per pupil-teacher ratio for regular elementary students and operating and capital outlay costs are about twice the amount per pupil needed for regular elementary pupils, the equivalent full-time pupils enrolled in exceptional education classes are given a weight of two. Appropriate weights were assigned to pupils enrolled in other high-cost programs and to pupils enrolled in small isolated schools which could not be consolidated. Johns and Alexander concluded that "the use of weighted pupils instead of unweighted pupils in apportioning state school funds substantially improved the equity of a state's school finance plan."<sup>1</sup>

Morrison<sup>2</sup> recognized that great disparities in school district wealth contributed to disparities in educational opportunity. Since education was a function of the state, Morrison recommended that all local school districts should be abolished and that the state should collect taxes and allocate resources equitably among school districts. This plan has come to be called Full State Funding.

Acceptance of the Strayer-Haig concept of state responsibility for providing an adequate minimum level of educational services based on a uniform local tax effort was reflected in the development of state school finance formulas between the 1920s and 1960s. Beginning in the

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<sup>1</sup>Johns and Alexander, Alternative Programs for Financing Education, p. 273.

<sup>2</sup>Henry C. Morrison, School Revenue (Chicago: University of Chicago Press, 1930).



early 1960s, this concept underwent growing criticism for limiting the principle of equal educational revenue for equal local tax effort to the required minimum local effort level, in effect permitting wealthy districts to generate greater revenue per unit of local effort above the minimum than poor districts. Benson made the following observation concerning the taxpayer inequities resulting from the traditional foundation program approach:

The power of some districts to include estates or large industrial holdings within their boundaries but to exclude high-density residential areas allows these districts to provide expensive educational programs at extremely low tax rates. The other result, of course, is that poorer districts (in terms of real property base) must levy taxes at high rates in order to finance even a minimum program.<sup>1</sup>

The shortcomings of the foundation method of state school finance with respect to taxpayer equity were summarized by Coons, Clune, and Sugarman:

The foundation plan has never provided that all districts can have the same offering if they make the same effort; the state will not equalize local ability to tax above the foundation level. Rich districts can turn out a better offering at every level of effort above the minimum rate. The effect, of course, is to radically exacerbate disparities between rich and poor with every tax increment above the foundation level.<sup>2</sup>

As an alternative to the foundation program concept of taxpayer equity based on a uniform local tax rate, Coons, Clune, and Sugarman<sup>3</sup> proposed that the principle of equal

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<sup>1</sup>Charles S. Benson, The Cheerful Prospect: A Statement on the Future of Public Education (Boston: Houghton Mifflin, 1965), p. 44.

<sup>2</sup>John E. Coons, William H. Clune III, and Stephen D. Sugarman, Private Wealth and Public Education (Cambridge, Mass.: Harvard University Press, 1970), p. 65.

<sup>3</sup>Ibid., pp. 27-40.

resource inputs per educational need unit for equal tax effort be applied at all levels of local effort selected by school districts through a power equalizing system of state school financing. This concept was similar to the percentage equalizing approaches suggested by Updegraff and Benson<sup>1</sup> except that power equalizing contemplated complete tax base equalization either by guaranteeing all districts the tax base of the wealthier district or by recapturing local dollars raised by local districts above the guaranteed level. In comparison, the earlier approaches provided equalization only up to a guaranteed level such as the state average wealth with no provision for recapturing excess revenues of wealthy districts. Coons, Clune, and Sugarman summarized the philosophy underlying power equalizing as follows:

Power equalizing is a commitment by the state to the principle that the relationship between effort and offering of every district will be the same irrespective of wealth and that the district is to determine the effort.<sup>2</sup>

There are numerous school finance formulas which have taxpayer equity as a goal. However, as discussed in the text, the achievement of the goal has become quite difficult due to the measurement of the fiscal capacity of the school districts and the equitable taxation of wealth. The use of income as a measure of fiscal capacity would

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<sup>1</sup>Updegraff, Rural School Survey of New York State, pp. 81-84; Benson, The Cheerful Prospect, pp. 63-74.

<sup>2</sup>Coons et al., Private Wealth and Public Education, p. 202.



probably increase the equity of taxation in comparison to the present systems of school finance, but at the same time, the use of this tax structure would decrease the local school district's accessibility to the economic bases being used to determine fiscal capacity. In contrast, the use of property valuation as the sole predictor of fiscal capacity would decrease taxpayer equity, but is an economic base that is available for taxation by local districts. Therefore, it would seem that a tax system that included both measures would be the optimum choice.

#### Criticisms of the Income Factor in Relation to Taxpayer Equity

As discussed previously in this chapter, many authorities feel that the economic indicator approach could significantly improve taxpayer equity by more accurately measuring the fiscal capacity of local school districts, and should therefore be included in the school finance systems to improve the equity of each.

However, there have also been criticisms of the economic indicator approach. As Mort<sup>1</sup> observed, local school districts have no power over their tax system except through state action. Therefore, fiscal capacity measures should be limited to the economic bases available to the local school district to provide horizontal individual tax

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<sup>1</sup>Paul R. Mort, State Support for Public Education (Washington, D.C.: American Council on Education, 1933), pp. 129-30.

equity. Another researcher has demonstrated that the use of an income factor in the apportionment of state equalization aid was neither efficient nor effective in redistributing state aid and tax relief to low income families.<sup>1</sup>

The economic indicator approach applies the concept of ability-to-pay to school equalization programs using the district as the unit of analysis. Districts with equal average wealth are considered to have equal taxpaying ability regardless of the tax bases available to each district. Mort<sup>2</sup> noted that it would unfairly burden individual taxpayers in school districts which have wealth which is not taxable under the system of taxation. Where property tax is the only available tax base, use of theoretical taxpaying ability may require a district with a high ratio of income to property to levy higher property tax rates than other districts to obtain a given level of state funding. This form of state funding may violate the horizontal equity principle as applied to the individual taxpayer.

This disparity in tax rates has been defended on the grounds that districts whose average income is above that for the state as a whole can afford to pay higher tax rates; however, it violates the horizontal equity principle as applied to the individual taxpayer. The fact that poor families live in districts whose average income exceeds the state average has been thoroughly documented; the use of

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<sup>1</sup>See Benson, Final Report.

<sup>2</sup>Mort, State Support for Public Education, pp. 68-

adjustments for average school district income requires these poor families to pay higher property tax rates than families in districts whose average income is lower. The same holds true at all levels of individual income: those with a given income who live in a district where average incomes are low pay lower property tax rates for a given expenditure guarantee than taxpayers with the same income living in districts where average incomes are high. However, on a statewide basis, the use of an income factor in a school finance system could still provide increased overall taxpayer equity in comparison to systems based solely on property valuation.

#### Legal Interpretations of Uniformity and Equality of Taxation Standards

By using a measure of average income, the possibility of violating standards of equality and uniformity of taxation becomes a real consideration. Therefore, a careful examination of court decisions in this area has been constructed in order to determine the legality of utilizing a tax structure that includes an income measure of local fiscal capacity.

The courts have attempted to define uniformity and equality of taxation. Although there is found in many cases language which, without direct reference to any applicable constitutional provision, lays down broad propositions suggesting that taxes should be levied with equality and uniformity in accordance with some reasonable

system of apportionment calculated justly to distribute the public tax burden.<sup>1</sup> It has been held that there is, in the absence of a provision in the applicable law requiring uniformity of taxation, either expressly or by necessary implication, nothing to prevent the legislature from imposing an unequal tax.<sup>2</sup>

It is frequently recognized by the courts that absolute or perfect equality and uniformity in taxation is impossible.<sup>3</sup> In Lee v. Sturges the court stated that "unequal and unjust results in individual cases are to some extent inevitably produced by any possible system of taxation."<sup>4</sup> Other courts have viewed a totally equal and uniform tax "utopian,"<sup>5</sup> "an unattainable good,"<sup>6</sup> and a "dream unrealized."<sup>7</sup> The courts have declared that the tax system which most nearly approaches perfect equality is the best system, and that substantial compliance with state and federal regulations concerning uniformity and equality of

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<sup>1</sup>Schreiber v. Cook County, 368 Ill. 297, 58 N.E. 2d 40, 155 A.L.R. 1162 (1944); Campbell County v. Newport, 174 Ky. 712, 193 S.W. 1 (1917); Johnson v. Smith, 297 N.Y. 165, 77 N.E. 2d 386, 3 A.L.R. 2d 888 (1948).

<sup>2</sup>State v. Traveler's Insurance Co., 73 Conn. 255, 47 A. 299, affd 185 U.S. 364, 46 L. Ed. 949, 22 S. Ct. 673 (1902); State ex rel Toi v. French, 17 Mont. 54, 41 P. 1078 (1895).

<sup>3</sup>Schreiber v. Cook County, 388 Ill. 297, 58 N. E. 2d 40, 155 A.L.R. 1162 (1944); Puget Sound Power & Light Co. v. King County, 264 U.S. 22, 68 L. Ed. 541, 44 S. Ct. 261 (1924).

<sup>4</sup>Lee v. Sturges, 46 Ohio 153, 19 N.E. 560 (1889).

<sup>5</sup>LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W. 2d 455 (1956).

<sup>6</sup>Florer v. Sheridan, 137 Ind. 28, 36 N.E. 365 (1894).

<sup>7</sup>LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W. 2d 455 (1956).

taxation is all that is required.<sup>1</sup> In Milliken v. Green<sup>2</sup> the Supreme Court of Michigan stated that:

. . . the function of an equal protection clause is to protect against governmental discrimination. . . . An equal protection clause forbids only unreasonable discrimination or, pejoratively, invidious discrimination.<sup>3</sup>

One stipulation concerning uniformity and equality of taxation that has been included in some state constitutions in express language is that taxation must be uniform throughout the political unit by which the tax is levied.<sup>4</sup> In Foster v. Pryor the Supreme Court stated that:

The foundation of the general rule that there shall be uniformity in taxation of the same kind of property in the same taxing district rests on the assumption that in such district the circumstances which are in the property to be taxed are ordinarily the same in substance, although there may be, and necessarily must be some differences as to the extent to which the different owners of property may be benefited by the taxes collected thereon, and it is to be assumed that an alteration as would work an unjust and illegal discrimination in taxing property situated alike.<sup>5</sup>

The interpretation of this ruling means that a tax for a state purpose must be uniform and equal throughout the state, a tax for a county purpose must be uniform and equal

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<sup>1</sup>LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W. 2d 455 (1956); Schreiber v. Cook County, 388 Ill. 297, 58 N.E. 2d 40, 155 A.L.R. 1162 (1944); Stanley v. Albany County, 121 U.S. 535, 30 L. Ed. 1000, 7 S. Ct. 1234 (1887); Maxwell v. Bugbee, 250 N.E. 525, 63 L. Ed. 1124, 40 S. Ct. 2 (1919).

<sup>2</sup>390 Michigan 389, 212 N.W. 2d 711 (1967).

<sup>3</sup>212 N.W. 2d 715 (1968).

<sup>4</sup>Foster v. Pryor, 189 U.S. 325, 47 L. Ed. 835, 23 S. Ct. 549 (1903); Whaley v. Northern Road Improvement District, 152 Ark. 573, 240 S.W. 1, 24 A.L.R. 934 (1922); Lund v. Chippewa County, 93 Wis. 640, 67 N.W. 927 (1896).

<sup>5</sup>Foster v. Pryor, 189 U.S. 325, 47 L. Ed. 835, 23 S. Ct. 549 (1903).



throughout the county, and a tax for a village, city, or township purpose must be uniform and equal throughout the village, city, or township. However, it does not mean that the taxes levied by one political subdivision must be at the same rate as another political subdivision. Nor does the rule require that taxes for the same purposes be imposed in different territorial subdivisions at the same time.

In United States v. Memphis<sup>1</sup> the Supreme Court held that to create a taxing district for a particular purpose within a county, city, or town without regard for existing political boundaries and to authorize a tax at a uniform rate on all of the property within the district for purposes of the district is legal. However, it has been ruled illegal for a legislature to divide a taxing district into parts and levy a tax for district purposes at a higher rate in one part than in another.<sup>2</sup> For instance, city property within a county tax district could not be declared exempt if the tax were for a district purpose. Also, a legislature may levy a tax upon one tax district alone if the purposes of the tax are public and local.<sup>3</sup> As an example, in Malone v. Williams,<sup>4</sup> sections of a municipal charter authorizing tax officials under certain circumstances, to charge against property the expense of making a survey

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<sup>1</sup>97 U.S. 284, 24 L. Ed. 937 (1978).

<sup>2</sup>Hutchinson v. Ozark Land Co., 57 Ark. 554, 22 S.W.7 (1893).

<sup>3</sup>Cook v. Portland, 20 Or. 580, 27 P. 263 (1891).

<sup>4</sup>118 Tenn. 390, 103 S.W. 798 (1970).



where no description of the property was submitted by the owner to the tax assessors were challenged as violating the constitutional requirement of uniformity of taxation, since nowhere else in the state was the burden imposed. The court said the possibility that all persons in the city or political subdivision might be burdened with the additional expense did not ensure the constitutionality of the provision. The court stated that "the matter of description is not local to any city or town, but is a general requirement covering the whole state."<sup>1</sup>

The courts have ruled that a tax, designed to be expended for a public purpose, is equal and uniform even if it has the effect of imposing a burden on one class as to benefit another class.<sup>2</sup> In Magnano<sup>3</sup> a 15-cents per pound excise tax was levied on oleomargarine distributors for the purpose of aiding the dairy industry. The plaintiffs contended that they were being denied their property without due process of the law and that the tax was not levied for a public purpose but was levied to prohibit the manufacturing, importation, and sale of oleomargarine. The United States Supreme Court held that "the differences between butter and oleomargarine are sufficient to justify their separate classification for purposes of taxation,"<sup>4</sup> and

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<sup>1</sup>118 Tenn. 390, 103 S.W. 798 (1970), p. 802.

<sup>2</sup>A. Magnano Co. v. Hamilton Attorney General, 292 U.S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (1934); Dressel v. Dade County, 219 So. 2d 716 (1969).

<sup>3</sup>A. Magnano Co. v. Hamilton Attorney General, 292 U.S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (1934).

<sup>4</sup>Ibid., p. 601.

would not impose an unequal tax on one sector of the population. The court also determined that it was quite clear that the tax was for a public purpose and could not be negated simply because "its enforcement may or will result in restricting or even destroying particular occupations or business."<sup>1</sup>

In most instances, uniformity of taxation does not require universality of taxation. Although general statements of equality and uniformity of taxation are occasionally found in decisions which also require that all property be taxed, such statements are generally interpreted as meaning that all property which is not within the power of the legislature to exempt from taxation must be taxed. A tax may be considered to be universal even if certain exemptions are included in a tax.<sup>2</sup>

In view of these legal precedents, the inclusion of an income factor in public school funding formulas could in some respects meet uniformity and equality provisions. The graduated tax would treat equal school districts as equals, but would probably fail to treat some equal individuals as equals. However, this type of tax could in some states more nearly approach perfect equality than the present

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<sup>1</sup>A. Magnano Co. v. Hamilton Attorney General, 292 U.S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (1934).

<sup>2</sup>Chicago Great Western Railway Co. v. Kendall, 266 U.S. 94, 69 L. Ed. 183, 45 S. Ct. 55 (1924); Charleston Federal Savings & Loan Assoc. v. Alderson, 324 U.S. 182, 89 L. Ed. 857, 65 S. Ct. 624 (1945); Cumberland Coal Co. v. Board of Revision, 284 U.S. 24, 76 L. Ed. 146, 52 S. Ct. 48 (1931).

school finance formula, therefore rendering it uniform and equal.

The problem seems to occur when considerations are made concerning the taxing district. As discussed in this section, a tax for a state purpose must be uniform and equal throughout the state. Considering that education is a state purpose, it might be held that a tax must be uniform throughout the state. However, the precedents have also shown that taxes may be levied at varying rates in different political subdivisions and still meet uniformity and equality standards. If the courts would view a school district as a political subdivision, then it might be possible to levy a graduated tax and not deny the citizens of equal and uniform treatment.

#### Declaring a Tax Inequitable

In examining equality and uniformity standard of taxation in relation to the use of an income factor as a measure of fiscal capacity, it becomes important to examine the legal precedents that have been set concerning the declaration of a tax as being inequitable. The possibility of future litigation dealing with the violation of uniformity and equality standards through the use of an income factor is a real one; therefore, a review of the case law from this area becomes relevant. The following section contains a discussion of the methods and standards that courts have used in declaring a tax inequitable.

Although the courts have been hesitant to declare a tax inequitable, there are avenues available for the taxpayer to utilize in bringing a suit which could result in a legal evaluation of the equality and uniformity provisions of the state constitution. Before the decision is reached, it must be shown that the action of the administrative officials was intentional, systematic, deliberate, persistent, habitual, fraudulent, and/or designed to violate fundamental constitutional principles. An error in judgment or a mistake has not been held to be a sufficient justification for declaring a tax inequitable. As an example, in Charleston Federal Savings and Loan Association v. Alderson, the Supreme Court stated that:

The equal protection clause of the Fourteenth Amendment does not prohibit inequality in taxation which results from mere mistake or error in judgment of tax officials or which is not shown to be the result of intentional or systematic underevaluation of some, but not all, of the taxed property in a single class.<sup>1</sup>

The burden of showing the administrative action to be illegal falls on the taxpayer, since the good faith of the tax officials and the validity of their actions is presumed.<sup>2</sup> Also, before judicial interference will take place, the improper system of valuation of assessment will have to be shown to have been applied to a large class of taxpayers, not just one or a few. For example, in San Antonio

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<sup>1</sup>324 U.S. 189 (1945).

<sup>2</sup>Sunday Lake Iron Co. v. Wakefield Township, 247 U.S. 360, 62 L. Ed. 1154, 38 S. Ct. 495 (1918).

Independent School District v. Rodriguez,<sup>1</sup> the class of taxpayer represented was poor people. However, the Supreme Court disallowed the classification since the case came to them ". . . with no definitive description of the classifying facts or delineation of class."<sup>2</sup> Even though the class would seem to be very broad, the court felt that it could not be clearly defined by any particular criteria and by using multiple criteria the members of the class would vary.

From this review of legal precedents, the possibility of declaring an income plus property based tax structure inequitable seems somewhat remote. To prove that the action of a legislature in implementing this type of tax structure was intentional would be difficult since the aim of most legislatures would be to improve taxpayer equity and not to intentionally or systematically develop a tax structure that would decrease taxpayer equity.

Also, the classes of taxpayers as defined by this tax structure would vary somewhat among districts due to the use of property valuation as a measure of fiscal ability. Since property values can be inflated due to the area in which they are located, the class of "poor" people could vary among districts, which would make an attempt to define such a class almost impossible.

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<sup>1</sup>411 U.S. 1, 93 S. Ct. 1278, reb. denied 411 U.S. 959, 93 S. Ct. 1919 (1973).

<sup>2</sup>411 U.S. 4 (1973).

Applicability of Equality and Uniformity  
Standards to Income and Property Taxes

Inasmuch as the alternative tax structure would include both an income and property measure, it becomes important to examine the applicability of uniformity and equality standards to both income and property taxes. Due to the fact that both measures are utilized in predicting fiscal capacity, there is a possibility that in some states the tax would be interpreted as a property tax while in another situation it might be viewed as an income tax. Therefore, legal precedents concerning equality and uniformity of taxation are reviewed in respect to both property and income taxes.

There seems to be some disagreement among the courts as to the applicability of uniformity standards to various kinds of taxes. The broad statement was made in Featherstone v. Norman that "the uniformity requirement applies to all kinds of taxes."<sup>1</sup> However, there seems to be a general understanding that the uniformity standards are applicable to property taxes.

In Commissioner ex rel Department of Justice v. A. Overholt & Co.<sup>2</sup> a constitutional provision which required all taxes be equal and uniform was interpreted as governing excise and privilege taxes as well as property taxes. However, it is frequently stated that express constitutional

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<sup>1</sup>170 Ga. 370, 153 S.E. 58, 70 A.L.R. 449 (1930).

<sup>2</sup>331 Pa. 182, 200 A. 849 (1938).



requirements of equality and uniformity in taxation are not applicable to income taxes.<sup>1</sup> The South Carolina Supreme Court stated that "taxes on incomes are excepted from the requirement of a uniform and equal rate of assessment and taxation of all property."<sup>2</sup> This does not mean that income taxes can operate independently of uniformity and equality standards. An income tax must still be imposed so that the burden will fall alike on all persons who are in the same class and not create arbitrary or unreasonable discrimination. Consequently, income taxes may be levied at progressive or graduated rates, increasing according to the amount of the taxpayer's income and not deny taxpayers the equal protection of the law. In Alderman v. Wells the court, in considering the constitutionality of a graduated income tax, held that "if the constituents of each class are all treated alike under similar circumstances and conditions, the rule of equal protection of the law is satisfied."<sup>3</sup>

In other instances, a uniformity and equality requirement in a state constitution has been interpreted as disallowing an income tax to be levied at a graduated rate.<sup>4</sup> The Supreme Court of Pennsylvania held that "a

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<sup>1</sup>Texas County v. Brown, 258 U.S. 466, 66 L. Ed. 721, 42 S. Ct. 375 (1922); Alderman v. Wells, 85 S.C. 507, 67 S.E. 781 (1910); Ludwig v. Harston, 65 Wyo. 134, 197 P. 2d 252 (1948).

<sup>2</sup>Alderman v. Wells, 85 S.C. 507, 67 S.E. 781 (1910).

<sup>3</sup>Ibid., p. 783.

<sup>4</sup>Commissioner of Corp. & Taxation v. Dalton, 304 Mass. 147, 23 N.E. 2d 147 (1939); Amidon v. Kane, 444 Pa. 38, 279 A. 2d 53 (1971).

constitutional mandate that all taxes be uniform applies to all species of taxes."<sup>1</sup> Therefore a graduated income tax was considered illegal in Pennsylvania.

In order to levy a graduated income tax for the support of a public purpose, the constitution and legal precedents would have to be reviewed to determine the possibility of using this kind of tax. As can be ascertained from the previous discussion, not every state will allow the use of a graduated income tax under the equal protection clause of the state constitution which could cause problems under the graduated system of taxation that would occur with the use of an income factor for public school funding.

### Summary

Uniformity and equality of taxation have long been problems in school finance. Authorities from many disciplines have attempted to define the terms and devise methods of taxation that would fulfill the requirements set forth in the definitions. Chapter II contains a review of the various methods of taxation that have been proposed to achieve uniformity and equality of taxation and the legal decisions that have helped to define and limit the terms.

Since the introduction of the foundation program in the 1920s, most states have adopted some form of a public school finance system that provided for varying degrees of

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<sup>1</sup>Amidon v. Kane, 444 Pa. 38, 279 A. 2d 53 (1971).

equality and uniformity of taxation with the state being held responsible for achieving equity for both public school pupils and taxpayers through a combination of state and local financing. With each state working independently on this task, there has been a proliferation of taxation methods, none of which have been completely successful for all of the groups being served: students, taxpayers, teachers, etc.

There have been two general philosophies of taxpayer equity which have received wide acceptance: the benefit principle which calls for the distribution of tax burdens among individuals in accordance with the benefits received from public services and, in contrast, the ability-to-pay principle which calls for the distribution of tax burdens according to individual ability-to-pay, regardless of the benefits received from governmental activities.<sup>1</sup>

It would be very difficult to ascertain the value of the prolonged benefits following graduation and determine the amount each person should pay. Therefore, the ability-to-pay principle has been utilized in taxation for education. Property valuation has been the tax most frequently used as a measure of ability-to-pay for the funding of public education. However, some authorities have suggested that income, consumption, and wealth are some indicators that should be employed in the measurement of the

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<sup>1</sup>Musgrave and Musgrave, Public Finance, p. 211.

economic position of individuals. In other areas of taxation, personal income has become one of the most frequently used measures of wealth in the United States. This strong endorsement of personal income as an economic indicator should promote the inclusion of an income factor in public school funding formulas.

With all of the positive components of an income tax, a tax structure almost entirely composed of income taxes seems to be the optimum choice. However, due to the three levels of government, it would be impossible to use the income tax exclusively as the only method of taxation, although the inclusion of an income factor in local taxation does seem to be reasonable from the progressivity point of view.

The courts have tried to define uniformity and equality of taxation and set standards for the legal evaluation of these principles. However, if there is no provision in the law that requires uniformity and equality of taxation, then there would be nothing to prevent the legislature from levying an unequal tax. Consequently, the interpretations have varied greatly and have received varied degrees of acceptance.

The courts have recognized that to achieve complete uniformity and equality of taxation would be an impossible task, and that substantial compliance with state and federal regulations is all that can be required, although some states have mandated that taxation must be uniform

throughout the political unit by which the tax is levied. In most instances uniformity of taxation does not require universality of taxation. A legislature may levy a tax upon one district alone if the purposes of the tax are public and local.

The courts have been hesitant to declare a tax inequitable: Before a decision is reached, it must be shown that the action of the administrative official was intentional, systematic, deliberate, persistent, habitual, fraudulent, and/or designed to violate fundamental constitutional principles. A simple error in judgment has not been held to be a sufficient justification for declaring a tax inequitable.

There seems to be a general understanding that equality and uniformity standards are most applicable to property taxes. This does not mean that other taxes can operate independently of all uniformity and equity standards, but that a state does not have to levy all of them at the same rate.

The task of getting a tax declared inequitable is a difficult one. The law assumes the good faith of the tax officials and the validity of their action, and the taxpayer is responsible for proving that the tax is inequitable. Although it is possible to achieve the goal through continued challenges in the courts, change can occur very slowly.

### CHAPTER III

#### ECONOMIC RATIONALE FOR USE OF INCOME AS A MEASURE OF TAXPAYING ABILITY

##### Introduction

Since local nonproperty taxes were introduced in the Depression of the 1930s, they have grown in significance as sources of revenue for local government. Between 1942 and 1966, nonproperty taxes increased from 7.6 percent to 12.9 percent of total local government revenues.<sup>1</sup> By 1974 the proportion had increased to 17.8 percent.<sup>2</sup> However, most local school districts have continued to rely heavily on local property taxes. During the mid-1970s, 98 percent of local school district revenues were derived from property taxation.<sup>3</sup>

In comparison, local nonproperty taxes became a significant source of revenue for school districts in a number of states during the late 1970s.<sup>4</sup> School districts

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<sup>1</sup>Duane V. Moore, "Local Nonproperty Taxes for Schools," in Status and Impact of Educational Finance Programs, eds. Roe L. Johns, S. Kern Alexander, and Dewey H. Stollar (Gainesville, Fla.: National Education Finance Program, 1971), p. 209.

<sup>2</sup>Benson, The Economics of Public Education, p. 265.

<sup>3</sup>Johns and Morphet, The Economics and Financing of Education, p. 147.

<sup>4</sup>Esther O. Tron, Public School Finance Programs, 1975-76 (Washington, D.C.: U.S. Government Printing Office, 1976).



in Maryland and Pennsylvania received revenue directly from local income taxation. Kansas received 15 percent of the state income tax proceeds which were returned to the school districts of resident taxpayers. Nevada, Louisiana, and Alabama also obtained revenues from local sales taxes, and in Virginia a state 1-cent sales tax was apportioned among school districts on the basis of school population. School districts in Tennessee, North Carolina, and other states also received allocations of local sales tax revenue from general county governments.

Chapter III contains a review of research findings concerning the relationship between property and income measures, and their effect on taxpayer equity. The data obtained from the quantitative research can be valuable in determining the possible effect of an income measure on equality of taxation. The research findings can also serve as a strong basis for support of the alternative tax structure when contested in the legal arena.

#### Correlations Between Property and Income Measures

With the increased use of local nonproperty taxes as a source of revenue for local school districts, researchers have begun to examine the distribution of income and property among districts within states and the relationship between the two measures. One of the methods of research that has been employed is the examination of the correlation between the two measures. Correlational

studies do not indicate a cause and effect relationship between two variables, but they do supply data that can provide insight into the directional relationship of the variables. Therefore, in examining the data from studies concerning the relationship between property and income, it becomes important to analyze the ability of one measure to predict the direction of the other measure. In the case of property and income, if the correlations are low then the assumption might be made that predicting fiscal capacity from property valuation would lack accuracy and would cause varying degrees of inequality of taxation due to the inability to predict income from property valuation.

The differences in the distribution of income and property among districts within states have long been a topic of discussion among writers in the field of school finance. During the 1920s and 1930s Strayer and Haig, and Morrison,<sup>1</sup> observed the differences between the two measures. Since the 1960s and 1970s several researchers have found low correlations between property and income measures of local capacity. James, Thomas, and Dyck<sup>2</sup> derived simple correlations between school district property valuation per capita and median family income of .56 in Wisconsin, .40 in New York, .38 in Oregon, .34 in California, .30 in

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<sup>1</sup>See Strayer and Haig, The Financing of Education in New York; Morrison, School Revenue.

<sup>2</sup>H. Thomas James, J. Alan Thomas, and Harold J. Dyck, Wealth, Expenditure, and Decision Making for Education (Stanford, Cal.: School of Education, Stanford University, 1963), pp. 7-8.

Massachusetts, .26 in New Jersey, .09 in New Mexico, .01 in Washington, and -.18 in Nebraska. Peterson et al.<sup>1</sup> found in a study of 104 Wisconsin school districts that the product moment correlation coefficient of property per capita and personal income per capita was .28. The correlation between equalized valuation of property per capita and mean family income was .27. Russell<sup>2</sup> found in a study of 367 Wisconsin school districts that the product moment correlation coefficient of equalized valuation per pupil per ADM and mean family income was .365. Kimbrough and Johns<sup>3</sup> studied the rank order correlation between per capita personal income and equalized valuation of property in districts of 20,000 population and above in four states in 1962-63. Kentucky, Florida, Georgia, and Illinois exhibited these correlations respectively: .637, .469, .442, and -.098. Davis<sup>4</sup> analyzed data according to demographic characteristics and found a rank order correlation coefficient of .22 between per capita income and per capita

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<sup>1</sup>Leroy J. Peterson et al., Economic Impact of State Support Models on Education (Madison, Wis.: School of Education, University of Wisconsin, 1963), pp. 57-63.

<sup>2</sup>Donald E. Russell, "Equality of Educational Opportunity in Wisconsin School Districts as Measured by Classroom Teacher Input" (Ph.D. dissertation, University of Wisconsin, 1973), p. 60.

<sup>3</sup>Ralph B. Kimbrough and Roe L. Johns, The Relationship of Socioeconomic Factors, Educational Leadership Patterns, and Elements of Community Power Structure to Local School Fiscal Policy (Gainesville: College of Education, University of Florida, 1963), pp. 68-72.

<sup>4</sup>Donald L. Davis, "Taxpaying Ability: A Study of the Relationship Between Wealth and Income in California Counties" (Ed.D. dissertation, Stanford University, 1963).

property valuations for California and urban areas exhibited a lower correlation (.14) between equalized valuation per property and personal income per capita than did rural areas (.38). The relationship between family income and total equalized valuation per pupil for Connecticut in 1970 was about .45, between median family income and residential property value per pupil the relationship was about .66, between mean family income and total equalized valuation per pupil about .56, and between mean family income and residential value per pupil .76. Hickrod and Sabulao<sup>1</sup> reported that correlations between median family income and assessed property valuation per pupil among suburban school districts in Boston, Chicago, Cleveland, Detroit, and St. Louis metropolitan areas were generally not significantly different from zero. Farner and Edmondson<sup>2</sup> found little or no correlation between equalized property value per pupil and income per pupil in a study of fiscal capacity in eleven western states.

The previous findings were confirmed by more recent studies. In 1977, Odden<sup>3</sup> derived correlations between assessed valuation per pupil and median family income. He

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<sup>1</sup>G. Alan Hickrod and Cesar M. Sabulao, Increasing Social and Economic Inequalities Among Suburban Schools (Danville, Ill.: Interstate Printers and Publishers, 1969), pp. 6-11.

<sup>2</sup>Frances Farner and John Edmondson, Relationship of Principle Tax Bases for Public School Support on the Counties of Eleven Western States (Eugene, Ore.: Bureau of Educational Research and Service, University of Oregon, 1969).

<sup>3</sup>Odden, "Alternative Measures," p. 365.

reported a correlation of .32 in Connecticut, .17 in Colorado, .11 in South Dakota, and -.10 in Washington. Odden<sup>1</sup> continued his studies in Missouri and found a correlation of .19 between average school district adjusted gross income per tax return and property wealth per pupil. In Illinois, Hickrod and Hubbard<sup>2</sup> reported a linear relationship between income and property valuation in Illinois in the lower wealth range but there was no significant relationship between the two variables above the median wealth level.

The consistent findings of low correlations between income and property could serve as the basis for an argument in favor of including both income and property in a comprehensive measure of a school district's fiscal capacity. As discussed at the beginning of the section, a low correlation between the two variables indicates that a very small portion of the direction of one variable can be predicted from the other variable. More specifically, property valuation for a district would not be a good predictor of the income of that district. Consequently, to use property valuation as the sole predictor of a school district's fiscal capacity would certainly cause taxpayer inequities due to the failure of the property measure to predict the

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<sup>1</sup>Allan Odden, "Missouri's New School Finance Structure," Journal of Education Finance 3 (Spring 1978a): 473.

<sup>2</sup>G. Alan Hickrod and Ben C. Hubbard, Illinois School Finance Research: Some Knowns and Unknowns (Chicago: Midwest Administration Center, University of Chicago, 1977).



level of income within the district. Therefore, in order to provide a more accurate estimate of a school district's fiscal capacity, the inclusion of both a property and income measure would seem appropriate.

### Income in Relation to Fiscal Effort

Another area that has been examined by researchers is the relationship between the income of a district and its fiscal effort. In some instances, the use of property valuation to determine fiscal effort provided misleading data, and subsequently caused the inequitable levy of taxes. Therefore, this section contains a review of the research concerning the relationship between income and fiscal effort, and the possible effect this relationship might have on taxpayer equity for the support of public schools.

According to McMahon<sup>1</sup> the reason that the narrow definition of wealth used in most state aid systems causes the state aid to be less effective than it could be in reducing the vast inequality in expenditure per child is that local tax and expenditure behavior reflects citizen behavior. This in turn, he concluded, is influenced by total wealth which he saw as the combination of property and income. When property taxes were used as the definition of effort, it misleadingly revealed the higher income districts to be exerting the greater effort, and in greater

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<sup>1</sup>Walter W. McMahon, "A Broader Measure of Wealth and Effort for Educational Equality and Tax Equity," Journal of Education Finance 1 (Summer 1978): 66.



need of state aid. Accordingly, the lower income districts were shown to be exerting lower effort. However, when their effort was measured by their tax collections as a percent of their total income and wealth the evaluation of effort was more accurate.<sup>1</sup> Consequently, the higher property tax rate triggered more state aid, so that among each set of districts with equal property wealth, more aid flowed to the higher income districts.

This type of inequality in fiscal evaluation has caused researchers to investigate the relationship between income or other wealth related variables and school district fiscal behavior. The findings of much of the research indicated a positive association between income and school tax rates and/or school district expenditures. In 1963 James, Thomas, and Dyck,<sup>2</sup> in a study of 589 school districts in ten states, reported a positive relationship between educational expenditures and wealth as measured by equalized valuation and median family income. Similar findings were the result of a 1966 study of large city school districts which concluded that income and property valuation were among the most effective predictors of educational expenditures.<sup>3</sup>

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<sup>1</sup>McMahon, "A Broader Measure of Wealth and Effort for Educational Equality and Tax Equity," p. 67.

<sup>2</sup>James et al., Wealth, Expenditure, and Decision Making for Education, pp. 94-100.

<sup>3</sup>H. Thomas James, James A. Kelly, and Walter A. Garms, Determinants of Educational Expenditures in Large Cities of the United States (Stanford, Cal.: School of Education, Stanford University, 1966), pp. 108-28.

More recent studies have provided further documentation that income is becoming an educational fiscal variable that merits attention. In Connecticut, income as well as property wealth per pupil were highly correlated with state and local expenditures per pupil, .56 and .66, respectively. The correlation coefficient between state and local expenditures per pupil and median family income in Colorado and Washington was .36 and .40, respectively. Furthermore, the correlation between school tax rates and income in Washington was .65.<sup>1</sup> In another study, Odden<sup>2</sup> reported that in Missouri property valuation and income correlated .75 and .45, respectively, with expenditure per pupil and .19 and .33, respectively, with school tax rates. Yang and Chaudhari<sup>3</sup> found high income, high educational attainment, high occupational status, and high residential housing value to be associated with high effort for education in Illinois, while low income was associated with medium to low effort for education. Odden<sup>4</sup> concluded that the relationship between wealth and expenditure depended upon composition of the property tax base and the structure

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<sup>1</sup>Odden, "Alternative Measures," p. 365.

<sup>2</sup>Odden, "Missouri's New School Finance Structure," p. 422.

<sup>3</sup>Thomas W. Yang and Ramesh Chaudhari, A Study of the Relationship Between Selected Socioeconomic Variables and Local Tax Effort to Support Public Schools in Illinois (Normal, Ill.: Center for the Study of Education Finance, 1976).

<sup>4</sup>Alan Odden, School Finance Reform in the States: 1978 (Denver, Col.: Education Commission of the States, 1978b), p. 19.

of the state school finance system as well as property valuation and household income.

The relatively high correlations between income and fiscal effort seem to indicate that the use of a property plus income base in public school funding formulas would help to improve taxpayer equity due to the more precise estimation of fiscal effort by school districts. If income were used to predict effort, the prediction would seem to be much more closely linked to ability-to-pay and would provide greater horizontal equity among the taxpayers of the state. Therefore, the use of an income factor in public school tax systems would help to achieve the goal of taxpayer equity through a more comprehensive and accurate estimate of effort.

This study indicates that the capacity of school districts must be viewed in a much broader context than merely that of property values. The use of an income measure seems to provide the added information required to more accurately define the fiscal capacity of school districts. The taxpayers would then benefit by having a system that included a tax levy that was much more closely linked to their ability-to-pay.

However, in the North Carolina study Melcher concluded that the use of an income factor which was not accessible to the local school districts would decrease the horizontal and vertical equity of the tax system.<sup>1</sup> Since

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<sup>1</sup>Melcher, "The Relationship Between Alternative Fiscal Capacity Measures," pp. 82-85.

the school districts did not have the authority to tax income, the use of it as a measure of fiscal capacity caused the tax structure to violate the horizontal and vertical equity standards of taxation. Consequently, a fiscal capacity measure was developed that was based on measures that were accessible to the local school districts.

#### Equitable Results of the Use of Income

A third area of research in relation to the use of an income factor concerns the equalizing effect of such a factor when inserted into a public school tax structure. Researchers have attempted to evaluate the effects on taxpayer equity that occur with the use of an income factor in relation to the equity that exists with the property based tax system. This area of research seems to provide some excellent data for comparing the effects of the two tax systems on taxpayer equity.

McMahon<sup>1</sup> recognized the need for a broader measure of wealth for local school districts and simulated a more comprehensive formula for the Illinois school districts that still allowed for a reasonable degree of local control and also reduced the excessive inequality in taxation and expenditure per pupil. Although he emphasized the fact that full state funding would do the most to equalize tax burdens, he was quite aware of the push for the retention of local control as stated by the Illinois Citizens

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<sup>1</sup>McMahon, "A Broader Measure of Wealth," pp. 65-88.

Commission on School Finance, "substantial control of public schools should be retained, which means that a substantial degree of local funding . . . must also be retained."<sup>1</sup>

With these basic assumptions, McMahon attempted to develop a tax system that combined an income factor and a measure of real property value. He devised a measure that included current income and net assets which were measured as equalized assessed valuation, at market value plus an income base that included salary income, interest income, dividend income, and capital gains. The property measure would allow the school districts to retain local control while the income base greatly enhanced the measure of a school district's ability-to-pay.

From the simulation, McMahon concluded that more aid would go to the low expenditure per pupil districts, which also tended to be low income, low ability-to-pay, and low total fiscal capacity districts. Any differences that would remain would then be based more on true differences in taste, rather than on difference in total wealth. Therefore, as McMahon stated, "the result would be in the direction of more equal tax collections in all districts that have equal well being, which is horizontal equity in the strictest sense."<sup>2</sup> The achievement of vertical equity would not be as complete. But as McMahon pointed out, the proportional taxation as would be achieved by the new

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<sup>1</sup>McMahon, "A Broader Measure of Wealth," p. 86.

<sup>2</sup>Ibid., p. 85.



system of taxation would be an improvement in vertical equity over the regressive nature of the local property tax collections which are currently being employed. McMahon strongly endorsed the new system by stating that, "the shift to broader measures of wealth and effort . . . will help to reduce the inequality in expenditures per pupil . . . while simultaneously improving the measure of effort and hence tax equity."<sup>1</sup>

As discussed in the previous section, Melcher<sup>2</sup> concluded that the taxpayers of North Carolina would benefit more from a tax structure that was based on fiscal capacity measures that were accessible to the school districts. He determined that income and property were measures of two different tax bases and in order to achieve vertical and horizontal equity, the school districts must have access to both tax bases. Consequently, Melcher recommended a tax structure that included a measure of fiscal capacity that is partially based on tax accessibility.

As Mort<sup>3</sup> observed in 1933, local school districts have no power over their tax systems except through state action; therefore, fiscal capacity measurement should be limited to the economic bases available to the local taxing jurisdiction to provide horizontal individual tax equity. Mort concluded that, "a district may be the situs of great

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<sup>1</sup>McMahon, "A Broader Measure of Wealth," p. 87.

<sup>2</sup>Melcher, "The Relationship Between Alternative Fiscal Capacity Measures," pp. 82-85.

<sup>3</sup>Mort, State Support for Public Education, pp. 129-30.



wealth, yet if a large part of it cannot be taxed locally, the part that is taxed is penalized heavily."<sup>1</sup>

### Conclusions

Since local nonproperty taxes have become more popular as a source of funding, researchers have begun to examine the relationship between income and property measures. Most studies have indicated a very low correlation between income and property measures. A low correlation between two measures usually means that only a small percentage of one variable can be predicted by the other variable, and therefore serves as an endorsement for the inclusion of both measures to more accurately predict the variable. Consequently, the use of both property and income measures would more accurately predict the fiscal capacity of school districts.

Researchers have also investigated the relationship between wealth measures and school district expenditures. Most have indicated a strong relationship between the measures. The high correlation could mean that the measures could serve a good basis for setting tax rates and evaluating local effort.

Another method of evaluation that has been used is statistical simulation. Most of this research has indicated that an income measure could significantly improve the equity of taxation for local school districts.

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<sup>1</sup>Mort, State Support for Public Education, p. 130.

Therefore, researchers have recommended the inclusion of an income factor in public school funding formulas.

Much of the research in this area could serve as a strong argument in favor of including an income factor in school funding formulas. However, some authorities have argued that the use of theoretical taxpaying ability would affect the horizontal equity of the tax system. The writers have concluded that the measures of fiscal capacity should be limited to the economic bases available to the local taxing jurisdiction.

## CHAPTER IV

### LEGAL JURISDICTION FOR EDUCATION AND TAXATION

#### Introduction

When discussing the use of an income factor in public school funding formulas, the authority and jurisdiction to levy taxes become important in determining the legality of such a tax system. Initially, there must be an examination of the right of the state to levy taxes for the support of public schools and then to determine the power of the state to delegate taxing authority to the local school districts. The problem stems from the fact that with the use of an income factor in a public school funding formula, the tax rates would vary among school districts. Consequently, the question deals with the power of the state to delegate taxing authority to local school districts to tax themselves at the rate determined by the funding formula. Therefore, the following section includes a review of the power of the state to tax its citizens for the support of public education, plus the power of the state to delegate the jurisdiction to tax.

#### Education, A State Responsibility

The use of an income factor in a school tax system can pose legal questions concerning the taxing jurisdiction

of the state and the authority of the state to break itself into smaller taxing units. Since the tax would be levied at a variable rate across the districts, the problem arises as to the right of the legislature to levy such a tax over what might be legally considered as one taxing jurisdiction. Therefore, the first question that must be answered concerns the responsibility for providing a public education system and the legal implications that entail in relation to taxing jurisdictions. This section serves as the legal groundwork for the latter discussions of taxing jurisdiction and authority.

The United States Constitution does not specifically delegate responsibility for education to the federal government; the Tenth Amendment reserves to the states and the people thereof all rights not specifically delegated to the federal government.

The courts have consistently held that the power over education is an essential attribute of state sovereignty of the same order as the power to tax, exercise of police power, and to provide for the welfare of the citizenry.<sup>1</sup>

The legal decisions governing education have been discussed in a number of ways and in a number of cases; for example, "the maintenance of common schools is a concern of the state and legislature," or "a uniform system of public schools is exclusively within the province of the legislature."<sup>2</sup>

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<sup>1</sup>Alexander et al., Public School Law, p. 71.

<sup>2</sup>Board of Education v. Stoddard, 294 N. Y. 667, 60 N.E. 2d 757 (1945); Moore v. Board of Education, 212 N. C. 499, 193 S.E. 732 (1937).

The courts in holding that education is a responsibility of the state, have maintained that this authority over education is not a distributive one but a central power which is assigned to the state. Most legislatures have unrestricted power to prescribe the method of education and the courts will only intervene if these methods are contrary to constitutional provisions. In Alexander v. People, the courts explained the system of state governance of education as follows:

The legislature being invested with complete power of all the purposes of civil government, and the state constitution being merely a limitation upon that power, the court will look into it, not to see if the enactment in question is authorized, but only to see if it is prohibited.<sup>1</sup>

Even though the state has been assigned the legislative functions of implementing and managing an educational system, it can delegate varied degrees of legislative powers to subordinate state administrative agencies. However, the powers of delegation have been treated as very flexible by the courts. For instance, the courts will tend to restrict delegation of powers in the areas of taxation, property rights, or individual rights. But, state education agencies have been granted a wide range of powers in relation to the regulation of purely educational matters such as school district organization. A Washington court described the delegation of education responsibilities as follows:

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<sup>1</sup>7 Colo. 155, 2P. 894 (1884).

The legislature may delegate these legislative controls to an administrative agency of the state, provided, in so doing, it defines what is to be done; the instrumentality's authority in so doing, by prescribing reasonable administrative standards.<sup>1</sup>

As the size and complexity of government has increased, the delegation principle has become more pervasive. Most public agencies have more general authority to assume broader prerogatives. The general rule which is accepted by most states is best explained by a New York court which quoted with approval the standard established by the United States Supreme Court, which said:

A legislative body does not abdicate its functions when it describes what job must be done, who must do it, and what is the scope of his authority. In our complex economy that indeed is frequently the only way in which the legislative process can go forward.<sup>2</sup>

The delegation of taxing authority to school districts could be a consideration in the levy of a variable tax rate. As discussed previously, if the levy of a variable tax rate would be prohibited at the state level then it might be possible for each school district to levy the tax. Therefore, the tax would be levied at the local level and would not violate the uniformity standards at the state level.

#### State Jurisdiction to Tax

##### Taxing for Education

Since the courts have considered the state to bear the responsibility for education, this section includes a

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<sup>1</sup>State v. Kinnear, 70 Wash. 2d 484, P. 2d 937 (1967).

<sup>2</sup>Jokinen v. Allen, 182 N.Y.S. 2d 166 (1958).



discussion of the state's authority to provide that support. As discussed in Chapter II, one of the major problems with a tax structure that includes an income factor is the lack of accessibility by the local school districts to the measures of fiscal capacity. Therefore, the consideration in this section is the delegation of the taxing authority to local school districts in order to allow greater access to the measures of fiscal capacity.

The power of a state to tax its citizens has been described as "unlimited," "plenary," and "supreme,"<sup>1</sup> in the absence of constitutional restrictions and subject to the will of legislative bodies, with the principal check upon its abuse resting in the responsibility of the members of the legislature to their constituents. The one element that appears in almost all authorizations of taxation is the requirement that a public purpose is necessary to justify any exercise of the taxing power.

The education of children has been recognized as a public duty.<sup>2</sup> As stated in Fogg v. Board of Education, "the fundamental purpose of the public school system is the protection and improvement of the state as a political entity."<sup>3</sup> And, as discussed in a previous section, the

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<sup>1</sup>Miles v. Department of Treasury, 209 Ind., 172, 199 N.E. 372 (1932); Independent School District v. Pfast, 51 Idaho 240, 4 P. 2d 893 (1946); Salt Lake City v. Christensen Co., 34 Utah 38, 95 P. 523 (1924).

<sup>2</sup>Fogg v. Board of Education, 76 N. H. 296, 82 A. 173 (1912); Herald v. Parish Board, 136 La. 1034, 68 So. 116 (1915); Bissell v. Davison, 65 Conn. 182, 32 A. 348 (1894).

<sup>3</sup>82 A. 175 (1912).

responsibility for providing an education system has been reserved to the states. Consequently, the right of a state to tax its citizens for the support of a public education system seems justified.

Since the power of taxation is a legislative function, it follows that taxes can be imposed, levied, assessed, and collected only under statutory authority and in the manner provided by the law. The power of the taxing officials can exist only by virtue of the statutes empowering them to act, and can be exercised only within the express authority conferred. In Mobile County v. Kimball, the United States Supreme Court held that:

When any public purpose is authorized, it rests with the legislature to determine in what manner the means to defray its costs shall be raised. It may apportion the burden ratably among all the counties or other particular subdivisions of the state, or lay the greater share or the whole burden upon that county or portion of the state specially and immediately benefited by the expenditure.<sup>1</sup>

As long as the legislature, in imposing a tax, does not violate constitutional limitations or restrictions, the courts have no concern with the wisdom or policy of the tax imposed. When the legislature transcends its functions and violates one or more of the restrictions or limitations placed upon the taxing power by the Constitution, the judiciary has the right and duty to declare the tax invalid.

As an example of this doctrine, the Columbia Gas and Electric Company brought suit against the Commonwealth

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<sup>1</sup>102 U.S. 691, 26 L. Ed. 238 (1921).

of Pennsylvania protesting a new tax system which was devised by the state to tax foreign-owned companies.<sup>1</sup> In holding the tax valid, the court stated that:

The discrimination which had existed in the tax treatment of foreign and domestic corporations might have been remedied by other methods, but it is not for the courts to determine the wisdom of the means chosen to accomplish a given equitable result. The legislature is the sole body to determine that question. It is only left to us to decide whether the system violates fundamental law.<sup>2</sup>

Judge Hargest went on to make a point that could become important in dealing with a new tax system that included a measure of income. He concluded that:

The franchise tax is certainly a new tax and a new tax system of arriving at taxable value. The method does not depart from the system or method heretofore existing of ascertaining the taxable value on which the tax is levied, but it cannot be condemned because it is new. Experimentation in taxation by the legislature is as lawful as experimentation in other fields.<sup>3</sup>

The United States Supreme Court also made a similar endorsement of experimentation by state legislatures in taxing its citizens.<sup>4</sup> When the Newark Fire Insurance Company protested personal property assessments made by the city under New Jersey statutes, the Court stated:

The task of devising means for distributing the burdens of taxation equitably has always challenged the wisdom of financial statesmen. Never has this been more true than today when wealth has so largely become the capitalization of expectancies derived from a complicated network of human relations. The adjustment of such

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<sup>1</sup>Commonwealth v. Columbia Gas and Electric Co., 336 La. 209, 8 A. 2d 404 (1939).

<sup>2</sup>Ibid., p. 409.

<sup>3</sup>Ibid.

<sup>4</sup>Newark Fire Insurance Co. v. State Board of Tax Appeals et al., 307 U.S. 313, 59 S. Ct. 918, 83 L. Ed. 1312 (1939).

relationships, with due regard to the promotion of enterprise and to the fiscal needs of different governments with which these relations are entwined, is peculiarly a phase of empirical legislation. It belongs to that range of the experimental activities of government which should not be constrained by rigid and artificial legal concepts.<sup>1</sup>

As an example of experimentation with taxation, in 1916 the state legislature of Massachusetts passed a law which allowed the state to levy a 1 percent income tax for the support of public schools. In 1919, the income tax was increased to 1½ percent to increase the financial support of public schools. Two years later, 1921, William W. Knights filed a suit against the Treasurer and Receiver General of Massachusetts charging that the 1½ percent income tax for the support of public schools deprived him of his property without due process of law and that he was subject to unequal taxation.<sup>2</sup>

The Supreme Court of Massachusetts held for the state based on the premise that the income tax was levied for a public purpose and that the income tax was reasonable and corresponded with the constitutional definition of being reasonable and uniform. The court determined that the income tax with the proceeds destined to go to cities for school budgets was an income tax and not a betterment tax. This decision rested upon the right of government to collect revenue which would be sufficient for its support.

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<sup>1</sup>Newark Fire Insurance Co. v. State Board of Tax Appeals et al., p. 922.

<sup>2</sup>Knights v. Treasurer and Receiver General, 237 Mass. 493, 130 N.E. 60 (1921).

The state's right to levy an income tax was found in Amendment 44 of Massachusetts' state constitution, with the basic requirement being that the rate of the income tax was uniformly levied upon income from the same class of property. Under the amendment, income taxes were not required to be proportioned or equal between different validly established classes.

The court stated that "it is elementary that taxes can be levied only for public purposes and clearly popular education is a public purpose."<sup>1</sup> They went on to conclude that: "The power of the commonwealth to levy a tax or to appropriate public money for the support of the public schools is indubitable."<sup>2</sup>

Subsequent to the ruling by the Massachusetts Supreme Court, the case was appealed to the United States Supreme Court on the basis that the tax was in violation of the 14th Amendment of the United States Constitution. The plaintiff charged that he was being denied his property without the process of law.<sup>3</sup>

The United States Supreme Court affirmed the decision of the lower court, concluding that:

The income tax imposed by Massachusetts is a general tax, and the proceeds thereof are a part of the general funds of the state, and their expenditure for educational purposes does not impose a public charge on a special class of property and persons not specially benefited, thereby taking property without the due

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<sup>1</sup>Knights v. Treasurer and Receiver General, p. 61.

<sup>2</sup>Knights v. Jackson, 260 U.S. 12, 43 S. Ct. 1 (1922).

<sup>3</sup>Ibid., p. 1.



process of law, in violation of Constitutional United States Amendment 14.<sup>1</sup>

The Supreme Court emphasized that taxes that used to be imposed by cities and towns are now imposed and collected by the Commonwealth and then distributed to the cities and towns to be expended for numerous public purposes. The growth of state education systems has caused more of the funding responsibilities to go to the state. The Supreme Court indicated that this trend would increase, and the rights of states to levy taxes for the support of public education would probably need to be expanded.

From this discussion it becomes clear that the legislature has the jurisdiction to tax its citizens for the support of a public education system. The courts have also emphasized their reluctance to interfere with the duties of the states in devising the tax systems, and have even gone so far as to encourage experimentation by the state legislatures in devising new methods of taxation. These rulings seem to serve a basis for states to claim the jurisdiction to incorporate a public school tax system that includes an income measure and to levy a variable rate tax for the support of public education.

#### Income Tax as Within Constitutional Jurisdiction to Tax

In some instances, an income factor in a public school tax system may be construed as an income tax.

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<sup>1</sup>Knights v. Jackson, pp. 61-62.



Although it would still be a property tax that was levied, if an income factor were somehow utilized in determining the property tax rate, the tax could be interpreted as a tax on income. Therefore, the state and possibly the local school districts must have the authority to tax income as well as property. As discussed in the previous chapter, one of the problems with the use of income as a measure of fiscal capacity is the limited access by local districts. This section contains a discussion of the legal authority to tax income and a possible method for allowing greater access to local districts.

Income taxes must be imposed by express statutes at the state or federal level, and a general clause in a tax law has been construed as not imposing a tax on income.<sup>1</sup> An Alabama court held that incomes were not included in a clause in a revenue act which stated items of property to be taxed as "all other property real, personal, and mixed."<sup>2</sup> Also, General statutes authorizing municipal corporations to levy taxes have been construed as not authorizing the levy of an income tax.<sup>3</sup>

However, some authorities are in conflict as to whether an income tax is a tax on "property" within the meaning of state constitutional provisions requiring such

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<sup>1</sup>Bowles v. Willingham, 321 U.S. 503, 64 S. Ct. 641, 88 L. Ed. 892 (1944).

<sup>2</sup>Eliasberg Brothers Mercantile Co. v. Grimes, 204 Ala. 492, 86 So. 56 (1920).

<sup>3</sup>Waring v. Savannah, 60 Ga. 93 (1948); Angell v. Toledo, 153 Ohio 179, 91 N.E. 2d 250 (1950).

taxes to be ad valorem, equal, and uniform, or limiting the rate of taxes on "property." While many cases hold that an income tax is not a tax on "property" within the meaning of such provisions,<sup>1</sup> the contrary viewpoint has also been expressed.<sup>2</sup> In Redfield v. Fisher<sup>3</sup> the court declared that a tax upon the gross income from particular kinds of property constituted in effect a tax upon the property itself. But a general gross income tax has been held to be an excise tax, and not a tax on property, within a constitutional requirement of uniform and equal assessment and taxation of property.<sup>4</sup> Also a tax upon the net income from a particular kind of property was determined not to be a tax upon the property from which the income was derived, nor subject to the constitutional limitations which affect property taxes.<sup>5</sup> If, in certain cases, an income tax could be considered a property tax, then local school districts with the power to tax property might also be construed to

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<sup>1</sup>Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720 (1925); Featherstone v. Norman, 170 Ga. 370, 152 S.E. 58 (1930); Miles v. Department of Treasury, 209 Ind. 172, 199 N.E. 372 (1935), appeal dismissed 298 U.S. 640, 80 L. Ed. 1372, 56 S. Ct. 750 (1936); Hunton v. Commonwealth, 166 Va. 229, 183 S.E. 873 (1936).

<sup>2</sup>Eliasberg Brothers Meccantile Co. v. Grimes, 204 Ala. 492, 86 So. 56 (1920); Bryant v. Commissioner of Corporations & Taxation, 291 Mass. 493, 197 N.E. 509 (1935); Hutchins v. Commissioner of Corporations & Taxation, 272 Mass. 422, 172 N.E. 605 (1930).

<sup>3</sup>135 Or. 180, 292 P. 813, cert. den. 284 U.S. 617, 76 L. Ed. 526, 52 S. Ct. 6 (1931).

<sup>4</sup>Miles v. Department of Treasury, 209 Ind. 172, 199 N.E. 372 (1935), appeal dismissed, 298 U.S. 640, 80 L. Ed. 1372, 56 S. Ct. 750 (1936).

<sup>5</sup>Redfield v. Fisher, 137 Ok. 180, 292 P. 313 (1931); cert. den. 284 U.S. 617, 79 L. Ed. 526, 62 S. Ct. 6 (1931).

have the power to tax certain kinds of income for the support of schools. The power to tax income would no doubt contain many limitations on the purpose of taxation, the recipients of the power to tax income, and the types of income subject to taxation. However, it is one method that could be used in very limited situations to allow local school districts access to both measures of fiscal capacity, income and property.

#### State Regulations Concerning Income Taxes

As discussed in the previous section, in some instances the income plus property tax could be viewed as an income tax. If this interpretation were to occur in states that have prohibited a state income tax, the alternative tax system would probably meet with some rather strong legal opposition. Again, as examined in the previous section, the possibility exists that the income could be taxed at the local level which would allow greater access to the measures of fiscal capacity and would also help to retain some control for the local school districts. A review of a state statute prohibiting a state income tax and a discussion of the possibility of the levy of a tax at the local level which has been prohibited at the state level are contained in this section.

Florida is one state that prohibits a state income tax. The statute reads as follows:

The tax upon estates or inheritances or upon the income of natural persons who are residents or citizens of the

state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by United States or any state.<sup>1</sup>

However, in a Florida case concerning the support of junior colleges, the Florida Supreme Court approved the levy of a local ad valorem tax which had been prohibited at the state level.<sup>2</sup> When Florida junior colleges were formed, they were considered to be part of the free public school system and were subject to the taxing limitations set by the state for local school districts. But as recognized by the Florida Supreme Court:

The constitution of 1968, in section 1, Article IX recognizes that there are three areas of public education: (1) a uniform system of free public school, (2) institutions of higher learning, and (3) other public education programs. The latter obviously applies to the existing systems of junior colleges, adult education, etc., which are not strictly within the general conception of free public schools or institutions of higher learning.<sup>3</sup>

The court observed that junior colleges were not public education programs under the control of the local school board, but were originally established by the joint action of local and state officials pursuant to the necessary action of the local school boards. Therefore, it seemed reasonable to the court that these institutions should continue to be aided financially by the areas which they primarily serve.

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<sup>1</sup>Florida, Constitution (1971), Art. 7, sec. 5.

<sup>2</sup>Board of Public Instruction of Brevard County v. the State Treasurer of Florida, 231 So. 2d 1 (1970).

<sup>3</sup>Ibid., p. 3.

In allowing for local support of the junior colleges, the court stated that:

Ad valorem taxes levied by county boards of public instruction for support of junior colleges which are not under the control of the local county board but which have been established at the board's request are local taxes levied for local purposes rather than prohibited state ad valorem taxes.<sup>1</sup>

The court emphasized the distinct local purpose that junior colleges serve as "bringing a high level of education within commuting distance of large numbers of students who could not otherwise attend college."<sup>2</sup> Therefore, the ad valorem taxes levied by school districts for support of such institutions are local taxes levied for local purposes and are legal under the Florida Constitution. The court proceeded to explain the decision by stating:

A legislature may not circumvent prohibition against state ad valorem taxation by any scheme or device which required local ad valorem taxes and then channel proceeds into essentially state functions which are not also local functions.<sup>3</sup>

This decision could possibly have some effect on future litigation concerning an income factor in public school funding formulas that are utilized in states that have prohibited a state income tax. It may be possible for the income tax to be levied at the local level to support the local services that a public school provides. Therefore, the school districts would have access to all of the

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<sup>1</sup>Board of Public Instruction of Brevard County v. the State Treasurer of Florida, p. 4.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.



measures of fiscal capacity which would help to achieve equality of taxation in states that have prohibited a state income tax.

### Delegation of Taxing Power

The levy of taxes at the local level would require the state to delegate a portion of its taxing authority to local school districts. The delegation of the authority would certainly increase local access and would probably help to alleviate the problem of levying a variable tax rate across the state. However, there are some legal precedents that could at least complicate if not prohibit the delegation of taxing authority to local districts in some states. Therefore, this section includes a review of the legal decisions concerning the general delegation of taxing authority, and then more specifically, the delegation of taxing authority to school districts.

Although it has been stated that the levying of taxes is a sovereign prerogative which the state cannot give away,<sup>1</sup> the general understanding is that the power to tax may, in the absence of constitutional prohibition, be delegated or relinquished.<sup>2</sup> Under a valid delegation by the legislature, a school district, which has no inherent power of taxation, may tax its citizens for the support of

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<sup>1</sup>Cleveland v. Edwards, 109 Ohio 598, 143 N.E. 181 (1937).

<sup>2</sup>Humphrey v. Peques, 16 U.S. 244, 21 L. Ed. 326 (1873); Chicago St. P. M. Go. R. Co. v. Douglas County, 134 Wis. 19, 114 N.W. 511 (1908).



public schools. In some states the constitutions expressly authorize the delegation of taxing powers to school districts, while other states require that the right of the legislature to delegate the power to levy taxes to school districts must be found in the constitution or it does not exist. In Associated Schools of Independent District No. 63 of Hector, Renville County v. School District No. 83 of Renville County,<sup>1</sup> the court, in examining the power of a school district to tax its citizens for the purpose of raising tuition, stated the following:

It has never been doubted that the state has the power to require of its municipal subdivisions the performance of duties of state concern and to demand that they raise money by taxation and disburse the same for such purposes. These municipal subdivisions are mere auxiliaries of the state, created by the state as a means of exercising its political power in an orderly manner.<sup>2</sup>

In some states, the validity of legislating to school districts the power to levy taxes for their purposes depends upon the status of the district as a municipal corporation. In Wilkinson v. Lord<sup>3</sup> the court recognized school districts as municipal corporations within the constitutional provisions of the state, whereas in Pennsylvania, it was held that an appointive school board is a special commission, and did not have the right to levy taxes under the state constitution.<sup>4</sup> The court ruled that

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<sup>1</sup>122 Minn. 254, 142 N.W. 325 (1913).

<sup>2</sup>Ibid., p. 326.

<sup>3</sup>85 Neb. 136, 122 N.W. 699 (1904).

<sup>4</sup>Wilson v. School District of Philadelphia, 238 Pa. 225, 195 A. 90 (1938).

"the power to tax is peculiarly a power of Legislature, and must be exercised through representatives chosen by people."<sup>1</sup>

Therefore, the possibility of delegating taxing authority to local school boards seems to be somewhat dependent upon the method used to select the board. If the board is selected by the voters, then it may be possible for the state to delegate taxing powers. However, if the board is appointed by officials, then the possibility of delegating taxing powers becomes more remote.

Another problem that could occur in relation to the Wilson decision, would be the lack of uniformity of methods for selecting boards of education within a state. If, in a state, some boards were elected and others were appointed, then the possibility of delegating the taxing authority to all of the school districts would become quite complicated. And, it would be ineffective to delegate taxing power to only that portion of the districts who elected their members.

The Wilson decision also attempted to define what constitutes a delegation of authority. In this case, the Philadelphia School District was responsible for determining the amount of money needed to pay the teachers and staff, pay the interest on and retire the principal of the indebtedness, and pay all other expenses and requirements

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<sup>1</sup>Wilson v. School District of Philadelphia, p. 94.

of the district which could not be less than three nor more than three and one-half mills. The state had also mandated that the levy for the local school district should fall between five and six mills. The court ruled that even though the state had fixed the levy to be between five and six mills, there was still delegation of taxing authority since each school board was responsible for determining the number and salaries of teachers and staff that needed to be employed to provide a thorough and efficient education system. As the court stated, "the uncertainty of the tax rate comes from the uncertainty of the number of teachers and the amount that is necessary to pay the teaching staff, which may be increased without outside interference."<sup>1</sup> Therefore, the ruling stated that:

. . . there is no delegation of the taxing power when the legislature fixes the amount or rate of the tax. But the amount or rate of tax is not fixed within this rule if there are matters left to the discretion of the board which will vary the amount of the tax.<sup>2</sup>

Since the Wilson case was decided, Pennsylvania has changed its tax laws so as to cause the decision to be considered moot. However, the concept of the ruling is still valid, but it is not applicable to the present Pennsylvania tax laws.

Most school districts maintain a certain amount of local control; from the Wilson ruling, this would constitute delegation of taxing authority. This delegation of

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<sup>1</sup>Wilson v. School District of Philadelphia, p. 97.  
<sup>2</sup>Ibid., p. 98.

authority would cause a return to the previously discussed problem of states that contain school districts that elect their members and others who appoint them. If the state were to mandate that all school districts have elected boards, there would be problems with the state interfering with the local control of schools. Consequently, the question of delegating taxing authority to local school districts becomes quite complicated and would have to be handled on a state-to-state basis.

Nevertheless, in states that could delegate taxing authority, the possibility for using a tax structure that includes an income measure seems very good. By delegating more taxing authority, the local school districts would have much greater access to all of the measures of fiscal capacity. Greater access would ensure increased horizontal equity for the taxpayers and would help school districts to maintain local control. Also, the delegation of taxing authority to school districts would allow the use of a variable rate tax across the state since each school district would be able to levy the tax locally and not violate equality and uniformity standards of taxation for the state.

#### State Jurisdiction to Use an Income Factor in Public School Funding Formulas

There has been very little legal precedent set dealing directly with the state's jurisdiction to incorporate an income factor into public school funding formulas. As of this writing, the Kansas courts have been the only

ones to render decisions on the subject. The following section contains a presentation of the cases that have dealt with the topic and a discussion of their relevance to the problems that have been examined in the previous chapters.

In 1972 a complaint was filed in the District Court of Johnson County alleging that the current method of financing elementary and secondary education in Kansas deprived the plaintiffs, as a class, of equal protection of the laws under the 14th Amendment of the United States Constitution and violated the Kansas Constitution.<sup>1</sup> The court applied the strict scrutiny equal protection test under the Kansas and United States Constitution, which is used whenever a suspect legislative classification interferes with a fundamental interest. Under the strict scrutiny equal protection test a legislative classification must be necessary to a compelling state interest. Wealth is a suspect classification under the equal protection guarantees of both the Kansas Constitution and the 14th Amendment to the United States Constitution and education is considered a fundamental interest under the same laws. The Kansas court held that the legislative classification did not satisfy the strict scrutiny equal protection test if the legitimate interests of the state could have been promoted by a "less restrictive alternative"<sup>2</sup> which would not infringe upon

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<sup>1</sup>Michele Caldwell et al. v. The State of Kansas et al., 210 K 11 (1972).

<sup>2</sup>Ibid., p. 14.

individual rights. The Kansas school financing system was held to not be necessary to a compelling state interest. Therefore, the Kansas school finance system was declared unconstitutional on the basis that wealth was an invalid classification that was too restrictive for funding a compelling state interest, education. The court seemed to feel that property taxation was a much less restrictive method for funding public schools since it allowed for more control by the local school districts due to the taxing authority available to the districts.

The principal deduction of each school district was based upon an economic index of 50 percent of a unified school district's home county's percentage of the state total adjusted valuation of tangible property, and 50 percent of a unified school district's home county's percentage of the state total of taxable income reported on state individual income tax returns. The economic index was then multiplied times the amount resulting from a theoretical ten-mill levy on the state total adjusted valuation of tangible property. The product, known as county ability, was then divided by the total number of certified employees in the county to arrive at a county ability per employee. The county ability per employee was then multiplied by the number of certified employees of each district in the county to determine each district's portion of county ability and the product of this calculation was deducted from the state shared guarantee. As a result of this method of financing



the public schools caused poor school districts to levy a high millage rate on the property in the district and still generate low per pupil funding, and rich districts could levy a lower millage rate and generate high per pupil funding. However, there was a direct correlation between the taxable wealth per pupil of a school district and the amount which that school district spent on its operating expenses per pupil.<sup>1</sup>

In a discussion of the case by The Kansas Association of School Board,<sup>2</sup> the retention of local control of financing school is stressed.

Educators want local authority with decisions made at the lowest level capable of making an efficient decision and at the same time they want funds to flow from the state and from funds based on ability to pay with apportionment of them based upon children's needs rather than the wealth of a school district. It is no doubt naive to expect the total tax wealth of the state to be the basis of collection and distribution of school monies unless the source of revenue be the source of control.<sup>3</sup>

From this quotation, the use of income to measure local fiscal ability is viewed as a means of depriving local school districts of their control over the financial support of their schools.

No reasonable basis is shown for the present financing system. No compelling state interest is evidenced for the continuation of classifications based on wealth . . . there is no compelling justification for making a taxpayer in one district pay a tax at a higher rate

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<sup>1</sup>Michele Caldwell et al. v. The State of Kansas et al., p. 15.

<sup>2</sup>Michele Caldwell et al. v. The State of Kansas et al., No. 50616, The Kansas Association of School Boards, December 1972.

<sup>3</sup>Ibid., p. 7.

than a taxpayer in another district, so long as the revenue serves the common state educational purpose.<sup>1</sup>

The Kansas Association of School boards concluded similarly that "the State may adopt any financial scheme it desires so long as the variations in wealth among governmentally chosen districts do not affect spending for the education of any child."<sup>2</sup>

In 1975, the Kansas School District Equalization Act of 1973 was amended.<sup>3</sup> District wealth was redefined to include consideration of an average of the preceding three years. This change could modify any sharp increases or decreases in either the adjusted valuation of the taxable income within a district. Also the inclusion of the intangibles tax within the computation of local effort rate was eliminated.

Also in 1975, prior to the implementation of the amendment, a suit was filed in Chautauqua district court which again challenged the Kansas state school finance formula.<sup>4</sup> In the intervening period between the filing of the suit and the hearing, the 1975 amendments were passed by the legislature. Therefore, when the case was tried, the court considered the complaint to be a moot issue due to the passage of the 1975 amendments. In the court's

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<sup>1</sup>Michele Caldwell et al. v. The State of Kansas et al., p. 17.

<sup>2</sup>The Kansas Association of School Boards, p. 7.

<sup>3</sup>K.S.A. 1975 Supplement 72-7030.

<sup>4</sup>Herbert Knowles et al., Appellants v. State Board of Education et al., Appellees 219 K. 271, 547 P. 2d 699 (1976).

opinion, the amendments had altered the Kansas public school finance formula to the extent that the issues presented in the Knowles case were moot issues. The court announced its decision that:

. . . by reason of the action taken by the 1975 Kansas Legislature, the law as it existed on February 25, 1975, no longer existed; that any determination concerning the constitutionality of the old law is moot; that the constitutionality of the 1975 amendments is an entirely new matter and must be litigated in a new action; that the injunction heretofore entered in the above case should be dissolved and that the above entitled case be dismissed.<sup>1</sup>

However, the plaintiff appealed the decision to the Kansas Supreme Court on the basis that no material changes were made in the provisions of the 1975 amendments and that the court should examine the new amendments and enter judgment on them as the law required. They contended that the district court erred in holding the issue moot without a hearing and that constitutional questions should be considered in light of new provisions of the 1975 law.

The Kansas Supreme Court declined to decide the constitutional questions due to the limited amount of information available to demonstrate the discrimination that could occur under the new law. The Court concluded that in this case "the operation and effect of the law on particular persons and classes is challenged rather than the basic theory of the law itself."<sup>2</sup> Although the Supreme

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<sup>1</sup>Herbert Knowles et al., Appellants v. State Board of Education et al., Appellees, p. 279.

<sup>2</sup>Ibid., p. 278.

Court did state that as more data became available concerning the effects of the new law, the case could be heard again.

The Supreme Court of Kansas did rule that the district court erred in holding the issue to be moot. The Supreme Court decided that the 1975 amendments did not change the design of the 1973 Act due to the fact that the distribution of state funds to local school districts still depended upon a complicated formula which attempted to arrive at a local need. The court felt that "the right of persons to challenge the constitutional effect of a law upon their persons or property should not be aborted everytime the law is amended by the legislature."<sup>1</sup> The court concluded that it could not decide the constitutional issues raised in light of the 1975 amendments. However, they did state that:

. . . the plaintiff should not be prevented from pursuing the constitutional issues raised in this action. It serves no purpose to require them to institute a new action and obtain new service of process when the parties are presently before the court.<sup>2</sup>

The order dismissing the case as moot was vacated and the case was remanded for consideration in light of any changes in the Kansas School District Equalization Act. There has been no further litigation to date.

The fact that the tax system was considered legal by the courts following the adjustments in computing the

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<sup>1</sup>Herbert Knowles et al., Appellants v. State Board of Education et al., Appellees, p. 279.

<sup>2</sup>Ibid.

income factor tends to devalue the decision as a legal precedent which denied the use of an income factor. The arguments by the court in the first decision dealt with the violation of equal protection and suspect classifications. As the method for determining income was altered by the state legislature, the tax system was declared to be legal. Therefore, it would seem that the problem dealt with the method used for measuring income and not the use of an income factor as denying control by the local school districts.

#### Summary

One of the major points of discussion in considering the use of an income factor in a public school funding formula is the jurisdiction of the state to levy taxes for the support of education and the right to delegate said jurisdiction. Since the tax would vary with this kind of tax system, the possibility that the state would have to delegate taxing authority is real, therefore requiring an in-depth investigation of the legal precedents concerning delegation of taxing authority.

Before authority can be delegated, it must be established that the state has the authority to tax for the support of public education. It has been clearly established by the courts that education is a state responsibility. Historically, the states have delegated considerable controls to local districts, but the ultimate responsibility lies with the state.



The state also has the power to tax its citizens for the support of a public education system. The power of the state to tax can exist only by the virtue of the legislature empower it to act. The courts have no power to determine the policy of the tax, just to declare it invalid, therefore allowing the state to devise its own tax systems even to the point of experimenting with different methods to help to achieve taxpayer equity.

In most cases the authority to levy an income tax must be granted by an express statute. There have been some occasions when courts have held that a general clause allowing a state to tax has included the right to levy an income tax<sup>1</sup> or that an income tax can be construed as a "property" tax.<sup>2</sup> In this case, the state might be able to delegate the authority to tax income and property to the local school districts.

One problem that could occur is in states that have a statute that prohibits the levy of an income tax. As discussed previously, a tax that includes an income factor could be construed as being an income tax and might therefore be considered illegal in such states. However, in Florida, an ad valorem tax that was prohibited at the state level was allowed at the local level for the support of a junior college. The court held that the junior college had

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<sup>1</sup>Eliasburg Brothers Mercantile Co. v. Grimes, 204 Ala. 492, 86 So. 56 (1920).

<sup>2</sup>Redfield v. Fisher, 135 Or. 180, 292 P. 813, cert. ded. 284, U.S. 617, 76 L. Ed. 526, 52 S. Ct. 6 (1931).



a strong local purpose and could therefore be supported by a local ad valorem tax. Consequently, if a public school could be interpreted as having a local purpose, then the use of a local income tax might be considered legal in states that prohibit a state income tax.

The courts have held, in most cases, that the states have the jurisdiction to delegate taxing power to local school districts. The one major determining factor seems to be the method used for choosing the school boards. If a school board is elected, then the state can usually delegate taxing authority. However, if the board is appointed, the courts have had some reservations about delegating taxing authority to a group that is not elected by the people. Therefore, in a state that had a mixture of elected and appointed school boards, the possibility of delegating taxing authority would be difficult.

Kansas has been the one state that has had some litigation directly dealing with the topic of using an income factor in a public school funding formula. In the first decision the Kansas court ruled that the school finance system violated the equal protection clause of the Kansas and United States Constitution, and usurped the power of the local school districts to devise funding for their schools.

In the interim, the method of determining the income of local school districts was changed. When another suit was filed contesting the school finance system, the

court ruled that the case was moot. From this decision, it would seem that the problem was not with the finance system but with the method used for calculating the income factor, therefore still allowing for the possibility of using a school finance system that contains an income factor.

## CHAPTER V

### SUMMARY AND CONCLUSIONS

Through investigation of the court actions and review of the related literature, this study served to clarify the issues surrounding and dealing directly with the main topic: the use of income to measure the fiscal capacity of local school districts, the major issue being the legal implications concerning the use of an income plus property measure in a public school finance formula. Much of the discussion deals with conceptual matters surrounding the issue, and the probable effect that precedents from these areas could have on future litigation concerning the use of income as a measure of local fiscal capacity. The possibility of litigation becomes more real as the idea of using an income factor becomes more popular. Therefore, the need for research in this area has increased. This study has attempted to fulfill that need by reviewing the related literature and court decisions better to understand the ramifications of using income to measure local fiscal capacity.

#### Summary

##### Equality and Uniformity of Taxation

Since the introduction of the foundation program method of state school financing in the 1920s, most states

have attempted to adopt a school finance system that afforded some degree of uniformity and equality of taxation. The two general philosophies of taxpayer equity most frequently utilized in these systems are the benefit principle which is based on the distribution of tax burdens among individuals in accordance with the benefits received from the public services, and the ability-to-pay principle which calls for the distribution of tax burdens based on the individual's ability-to-pay, regardless of the benefits received.

In theory, the benefit principle seems to be a good choice. In some areas, such as charges for electricity consumption, it works well. However, to charge for the benefits received from education would be an insurmountable task. Therefore, the ability-to-pay principle has served as the basis for funding education. And, property valuation has been the measure for predicting that ability-to-pay for education. With increased pressure from the voters and the courts to improve taxpayer equity, the idea of including an additional measure of ability-to-pay has gained in popularity. Since income is a good measure of economic position, its use in school funding formulas has been suggested, and in some cases, integrated into the tax system.

A graduated income tax is progressive in its effect and is closely related to the ability-to-pay principle, whereas the property tax is at best proportional and at worst regressive. From this discussion, it would seem that the optimum tax structure would be one composed almost

entirely of income taxes. However, due to the three-tiered structure of government, federal, state, and local, this type of tax structure would not be feasible. Consequently, the federal government has relied heavily on graduated income taxes for its means of support. While state and local governments have all utilized less progressive taxes, local governments have relied almost entirely on property taxes as its source of income.

The absence of any income measure or tax in most local government tax structures seems to predispose it to being inequitable. The inclusion of an income factor, in addition to the property tax, would improve the prediction of ability-to-pay, plus increasing the vertical equity of the tax structure. However, the use of an income factor could harm the horizontal equity of the tax system.

Since the beginning of the twentieth century, there have been a number of school finance systems proposed which should achieve, or at least improve, taxpayer equity. However, since most of them utilized property taxes as the means of support, the systems seem to contain varying degrees of inequity due to the kind of tax being employed.

However, the economic indicator approach has not always been viewed favorably in relation to horizontal taxpayer equity. The major complaint is that the tax structure would treat equal school districts as equals, but would fail in some cases to treat equal individuals in different districts as equals, therefore, violating the

horizontal equity principle for individual taxpayers. Consequently, a tax structure that would theoretically improve vertical taxpayer equity would probably treat some individuals more inequitably than they had been treated under a more traditional tax structure.

The new structure, an index of property and income, has been defended on the grounds that a district whose average income exceeds the average state income could still afford to pay higher tax rates. However, this argument still fails to solve the problem of horizontal individual taxpayer inequity which could occur. And thus, this inequity becomes the most significant problem concerning the use of an income factor in public school tax structure.

In examining the legal precedents that have been set concerning uniformity and equality of taxation, it seems that the courts have been quite lenient in their interpretation of these principles. They have recognized that absolute equality and uniformity of taxation are impossible<sup>1</sup> and consequently have declared that tax systems that make substantial compliance with uniformity and equality regulations are acceptable.<sup>2</sup>

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<sup>1</sup>Schreiber & Cook County, 388 Ill. 297, 58 N.E. 2d 40, 155 A.L.R. 1162 (1944); Puget Sound Power & Light Co. v. King County, 264 U.S. 22, 68 L. Ed. 541, 44 S. Ct. 261 (1924).

<sup>2</sup>LeDioyt County of Keith, No. 1, Neb. 615, 74 N.W. 2d 455 (1956); Schreiber v. Cook County, 388 Ill. 297, 58 N.E. 2d 40, 155 A.L.R. 1162 (1944); Stanley v. Albany County, 121 U.S. 535, 30 L. Ed. 1000, 7 S. Ct. 1234 (1887); Maxwell v. Bugbee, 250 U.S. 525, 63 L. Ed. 1124, 40 S. Ct. 2 (1919).



One stipulation concerning uniformity and equality of taxation which is in effect in some states is that taxation must be uniform throughout the political unit by which it is levied.<sup>1</sup> A ruling such as this one could become quite important in legal decisions concerning the levy of a variable tax rate across a state. If the state were considered to be the political unit for taxation for the support of public education, it is possible that the levy of a variable tax rate across the political taxing unit, the state, could be viewed as violative of uniformity standards of taxation, the major objection being that some taxpayers within the political taxing unit are required to pay a higher tax rate than other taxpayers within the same political taxing unit.

In contrast, the United States Supreme Court has held that a tax, if designed for a public purpose, is equal and uniform even if it has the effect of imposing a burden on one class as to benefit another class.<sup>2</sup> Since it is well documented that education is considered to be a public purpose,<sup>3</sup> it might become possible to levy a higher tax rate or greater burden on those school districts that have

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<sup>1</sup>Foster v. Pryor, 189 U.S. 316, 47 L. Ed. 835, 23 S. Ct. 549 (1903); Whaley & Northern Road Improvement District, 152 Ark. 573, 240 S.W. 1, 24 A.L.R. 934 (1922); Lund v. Chippewa County, 93 Wis. 640, 67 N.W. 927 (1896).

<sup>2</sup>A. Magnano Co. v. Hamilton Attorney General, 292 U.S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (1934).

<sup>3</sup>Fogg v. Board of Education, 76 N.H. 296, 82 A. 173 (1912); Herald v. Parish Board, 136 La. 1034, 68 So. 116 (1915); Bissell v. Davison, 65 Conn. 182, 32 A. 348 (1894).

been determined as having a greater ability-to-pay, for the purpose of aiding the other school districts which are not as fiscally able. Consequently, everyone would still pay taxes to support the public purpose, education, but the greater burden would fall on those who have a greater fiscal ability to support it. The tax structure could still be considered equitable and uniform, and the support would be apportioned on a more expanded measure of fiscal ability, property valuation plus income.

The courts have been rather hesitant to declare a tax inequitable. It must be shown that the action of the administrative officials was intentional, systematic, deliberate, habitual, fraudulent, and/or designed to violate fundamental constitutional principles. A mere error in judgment or a mistake has been held not to justify declaring a tax inequitable. The alternative tax structure is not designed to violate constitutional principles, but to improve the equity of taxation for the support of public schools. If, in fact, it did not improve the equity of taxation, it would most probably be an error in judgment and not a scheme to violate a citizen's constitutional rights.

In most instances a graduated income tax has been held to not violate equality and uniformity standards.<sup>1</sup> As long as the burden falls alike on all equal persons and

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<sup>1</sup>Alderman v. Wells, 85 S.C. 507, 67 S.E. 781 (1910).

does not create arbitrary or unreasonable discrimination, then the tax is considered to be legal.

Again the problem reoccurs concerning the treatment of equal persons in contrast to equal school districts. A return to the initial discussion of uniformity and equality is warranted to examine the basis for evaluating the tax which states that no tax structure could be expected to achieve total equality and uniformity. Therefore, there are going to be some equals who are not treated as such. The alternative tax structure could still achieve a high degree of uniformity and equality through more accurate measurement of fiscal capacity and not cause unreasonable discrimination among the taxpayers.

However, in other instances, a uniformity and equality requirement in a state constitution has been interpreted as disallowing a graduated income tax.<sup>1</sup> If this precedent had been set in a state, the possibility of utilizing a tax structure which entailed the levy of a graduated tax seems remote. Even if the graduated tax was not determined to be an income tax, it would seem that the court would interpret it as violating the same uniformity and equality requirements.

#### Contribution of Statistical Studies

Most of the researchers have reported very little relationship between the income of a district and its

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<sup>1</sup>Commissioner of Corp. & Taxation v. Dalton, 304 Mass. 147, 23 N.E. 2d 147 (1939); Amidon v. Kane, 444 Pa. 38, 279 A. 2d 53 (1971).

property valuation. Therefore, as predictors it would seem that only a small percentage of one variable could be predicted from the other variable. However, the low correlations do not indicate that income is the best measure to use in conjunction with property valuation to predict fiscal capacity. But it does indicate the need for another variable to aid in the prediction of fiscal capacity. Many researchers have chosen income as the accompanying variable due to its close relationship to ability-to-pay.

Other researchers have used computer simulations to evaluate the effect of an income factor on taxpayer equity. In most instances the results indicated that some measure of income would be beneficial in improving taxpayer equity. This kind of research deals only with the mathematical effects on taxpayer equity. Therefore, recommendations are made on such a basis with little consideration for the legal aspects of developing the tax structure. So, it is possible to have a very equitable system mathematically but one that could not be implemented due to state laws.

Some researchers have concluded that a tax structure should only include measures of fiscal capacity that are accessible by the local school districts. They have asserted that the use of theoretical taxpaying ability would cause horizontal inequities among individual taxpayers in states that denied access by local school districts to all measures of fiscal capacity. From this viewpoint, it would seem that an income plus property measure should

be used in the states that have delegated taxing authority to the local school districts so as to allow access to all measures of fiscal capacity.

### Legal Jurisdiction

The final area to be examined is the legal authority of states to levy taxes for the support of an education system and to delegate that authority to local school districts. The legal precedents were examined in respect to giving local school districts access to all measures of fiscal capacity so as to improve the horizontal equity of the tax structure.

The courts have consistently ruled that the state has the general responsibility for providing an education system for its citizens.<sup>1</sup> Legally, some of the powers can be delegated to subordinate state agencies to facilitate the daily operations, but the state is still ultimately responsible for education. As long as the legislatures stay within the bounds of the constitution in imposing a tax, the courts have very little authority to influence the tax system. The courts have even encouraged experimentation with taxation to better achieve taxpayer equity. It appears that the state would have the power to devise an alternative tax system that would include an income measure for the support of public education and remain within the legal confines of the constitution.

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<sup>1</sup>Alexander et al., Public School Law, p. 71.

Approximately six decades ago, the United States Supreme Court said in the Knights<sup>1</sup> decision that the taxing powers of the states would have to be expanded for the support of public education. This statement could serve as a strong endorsement for allowing the states to expand their taxing powers to include the right to levy a graduated tax on local school districts for the support of public education. And in the process, vertical taxpayer equity would probably be improved.

As for the present income taxing powers of the states, the right to levy an income tax must be imposed by express statutes. In most instances the general authority to tax property does not give a state the jurisdiction to tax income. And, in some states, the power of the state to tax income has been expressly denied by the legislature. Therefore, the power to use an income measure in the public school tax structure will vary among states.

In a state such as Florida where a state income tax is prohibited by the constitution, the use of income at local level is impossible except through amendment. Even though the tax would probably be termed a "property" tax, the fact that a portion of the tax would be determined by income levels might cause it to be interpreted as an "income" tax. If it were interpreted as such, then it would probably be considered illegal in states that prohibit a state income tax.

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<sup>1</sup>Knights v. Jackson, 260 U.S. 12, 43 S. Ct. 1 (1922).



In order to maintain such a structure, the state would have to delegate some of its taxing authority. Generally, for a state to delegate its taxing power to subordinate agencies is considered legal as long as it does not violate a constitutional prohibition. However, in reference to school districts, the problem seems to focus on the methods used to select the school board. If the board is elected by the citizens, then the state can usually delegate some taxing authority. The courts have viewed the board as elected officials like any other state officer, which would mean that the people have had some input concerning their choices. Therefore, if the board has the power to levy taxes, then the citizens have the voting power to influence the decisions.

However, if the board is appointed, the citizens do not have the direct power to control the board, which would allow a group that was not directly selected by the people to levy taxes on those people. This structure would constitute taxation without direct representation which has been considered illegal by most courts.

These decisions serve as reminders that the legality of using an income measure in a public school funding formula will vary among the states. In states that have boards that are both elected and appointed, the possibility of delegating taxing authority becomes confusing. If the state were to mandate that all school boards were to be elected, then a portion of the control of local school

districts would be usurped. This mandate would most probably meet with a great deal of resistance from the local school districts and would make working relations very difficult. Therefore, the state mandate might give negative returns and not really justify the end result.

The courts have also attempted to define delegation. The Wilson<sup>1</sup> decision seems to supply a usable definition for school systems. The Pennsylvania Supreme Court determined that there is delegation of authority if the local board has some discretion in varying the amount of the tax. Even though the state may set the tax rate, if the decisions of the local board would influence the rate the court ruled that there was delegation of authority.

In one aspect this decision could be viewed as a precedent which would hinder the use of an income factor in a public school funding formula. If viewed as an interpretation of delegation of authority, the problem would arise again concerning the type of board that is receiving the authority. As discussed previously, if the board were appointed, then there could be some problems with allowing the board to levy taxes. And in light of the court's decision, if the local board had some influence on setting the tax rate, then this would constitute delegation of authority. Therefore, the same problem would occur in a state which had both elected and appointed school boards.

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<sup>1</sup>238 Pa. 225, 195 A. 90 (1938).

Kansas has been the only case this researcher could identify dealing directly with the use of an income factor in the public school tax structure. After reviewing the decisions, there seems to be some inconsistencies in the reasoning. Initially, the court held that the finance system was declared unconstitutional under the strict scrutiny equal protection test.<sup>1</sup>

The inconsistencies occur with the second decision. In the Knowles<sup>1</sup> case, the method of determining income had been changed by the legislature and subsequently the court ruled the issue moot. Since there has been no further litigation concerning the tax structure, it would seem that the court found fault with the method being used to determine local fiscal capacity and not the tax structure. The lack of consistency in these decisions fails to provide a solid precedent for deciding similar cases.

### Conclusions

#### Equality and Uniformity of Taxation

The income measure is more closely linked to ability-to-pay than the property valuation, and therefore should provide greater vertical equity than a tax system based solely on property valuation. These attributes should negate the problems concerning the use of a district

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<sup>1</sup>Michele Caldwell et al. v. The State of Kansas et al., 210 K. 11 (1972).

<sup>2</sup>Herbert Knowles et al., Appellants, v. State Board of Education et al., Appellees, 219 K. 271, 547 P. 2d 699 (1976).

average income rather than individual income. The overall improvement in taxpayer equity would outweigh the inequities caused by the use of average district income.

The school finance systems that have been utilized are based on property valuation as the measure of fiscal capacity. The use of this measure has predisposed almost all of the finance systems to a certain degree of inequity due to the regressive tendencies of the property tax. The use of an income plus property measure would probably improve the vertical equity of the various finance systems and give it a more progressive effect on the taxpayers.

The legal precedents concerning uniformity and equality of taxation can also have a definite effect on the use of an income measure in school finance system. The major problems arise with the levy of a variable rate tax across a state and the use of the measure of average district income in contrast to individual income to determine each district's levy.

In examining the legal precedents in this area, it seems that the levy of a variable rate tax across a state would be legal in most instances. As stated in Chapter II, it is possible to levy a higher rate tax on one area of a taxing district to support a district-wide responsibility. Therefore, if the state is considered to be the taxing district, then it would be possible to levy a higher rate tax on the districts with a greater ability-to-pay for the support of a state system of public education.

The possibility of the courts declaring this type of tax system inequitable would seem to be limited. The action of the legislature in implementing this tax structure would not be viewed by the courts as intentionally reducing taxpayer equity. But instead, most legislatures would want to increase taxpayer equity by including an income measure in the school finance system. Also, the groups of taxpayers as defined by the tax system would vary among districts due to the multiple criteria used to define the classes of taxpayers.

There is one area of the law that could cause the tax system to be declared inequitable. In some states, the use of a graduated income tax is considered illegal. Therefore, the use of a variable tax rate that is partially based on income might be considered as violative of the laws which prohibit a graduated income tax.

#### Economic Rationale

The consistent findings of low correlations between income and property measures indicate that property valuation is not a valid predictor of income. The low correlations do not indicate that income is the measure that should be added to property valuation to provide measures of fiscal capacity. However, since income is closely linked to ability-to-pay, the use of it to predict fiscal capacity would seem to improve the measure.

In computer simulations of tax structures that include an income measure, the taxpayer equity seemed to

improve. However, other researchers have concluded that the use of theoretical taxpaying ability could cause greater horizontal taxpayer inequities than a tax structure that included only property valuation as the measure of fiscal capacity since most school districts do not have access to tax income.

#### Legal Jurisdiction for Education and Taxation

The state has the final responsibility for providing a system of public education, although, in many instances, the state has delegated some of its responsibilities to the local school districts. If the courts prohibit the levy of a variable rate tax by the state, it could be possible for the state to delegate some of its taxing authority to the school districts so as to allow each district to levy the tax at the local level.

The delegation of taxing authority would also give the school districts access to both measures of fiscal capacity, property and income. The increased access would help the school districts to retain their local control. Retention of local control would make the tax system much more popular with the school districts and would probably cause the tax system to meet with less litigation.

Income taxes must be imposed by express statute. Therefore, if the state is to delegate income taxing authority to the school districts, it will have to be done by express statute. The other possible method for



delegating taxing authority would be for the courts to consider the school district's authority to tax property to encompass the authority to tax income. There have been legal precedents set by the courts which have included income within the general authority to tax. Consequently, in states where these precedents exist it may be possible for the school districts to tax income under their authority to tax property, especially since the tax is a combination of property plus income.

In the states that have prohibited a state income tax, the possibility of using an income factor would seem to be more limited. If the combined income plus property tax were considered to be an income tax, then the levy of the tax at the state level would probably be prohibited by the courts.

The method for choosing the group to which taxing authority will be delegated seems to be a determinant in giving local school districts access to the measures of fiscal capacity. However, it would seem that if school districts, whether appointed or elected, have the authority to tax property then it should also be possible to delegate the authority to tax income. Again, the decisions by the courts concerning delegation of taxing authority to local school districts will differ among the states. However, in the states where it is considered legal, the delegation of taxing authority to local school districts would increase access to the measures of fiscal capacity plus help to retain local control.

These cases seemed to lack definition and there can be very little legal precedent drawn from the decisions. Just as the laws concerning taxation differ among the states, the legal precedents will also differ dependent upon the laws. There is no pervasive rule that would determine the legality of a tax system that includes an income factor. The major determinant will come from the precedents that come from the legal challenges that will occur in the states, and these precedents will influence the design and implementation of the tax structure.

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## BIOGRAPHICAL SKETCH

Jill S. Louv was born November 14, 1952, in Pinckneyville, Illinois. Following completion of high school in 1970, she entered Murray State University in Murray, Kentucky, and received a Bachelor of Science degree in health and physical education in May 1974.

Upon completion of college, Ms. Louv was awarded a graduate teaching assistantship in September 1974 to study for a Master of Arts degree in physical education. Following graduation in December 1975, she was employed as an interim instructor in the Department of Physical Education at the University of Florida until June 1976.

In September 1976, Ms. Louv was employed by Oak Hall Private School in Gainesville, Florida, where she served as a physical education instructor and women's athletic director. Also, during this time, she was employed as the head women's volleyball coach for the University of Florida Athletic Association.

While teaching and coaching, Ms. Louv was admitted to the doctoral program in educational administration at the University of Florida in June 1977. She participated as a part-time student until March 1978, whereupon she expanded her role to a full-time student and served as a

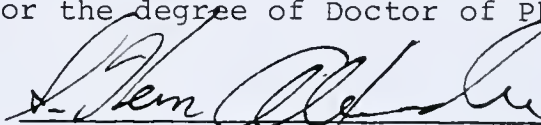
graduate assistant in the Office of the Dean of the College of Education.

In September 1978, Ms. Louv was employed as a research assistant with the Institute for Educational Finance. She participated in school finance studies in Florida, Louisiana, and Tennessee.

Jill S. Louv is presently living in Shrewsbury, New Jersey. She is married to William C. Louv.



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Professor of Educational Administration

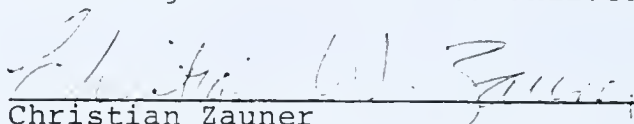
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James L. Wattenbarger  
Professor of Educational Administration

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Christian Zauner  
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This dissertation was submitted to the Graduate Faculty of the Department of Educational Administration in the College of Education and to the Graduate Council, and was accepted as partial fulfillment of the requirements for the degree of Doctor of Philosophy.

June 1981

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Dean, Graduate School

